Protocol

amending the Agreement between

the Government of New Zealand

and

the Government of Australia

for the Avoidance of Double Taxation

and

the Prevention of Fiscal Evasion

with Respect to Taxes on Income

The Government of New Zealand and

the Government of Australia,

Desiring to amend the Agreement between the Government of New Zealand and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Melbourne on the 27th day of January 1995 (in this Protocol referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

Article 2 of the Agreement is amended by inserting:

"3. Notwithstanding paragraphs 1 and 2, the taxes to which Articles 26 and 27 shall apply are:

a) in the case of New Zealand, taxes of every kind and description imposed under its tax laws; and

b) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation."

ARTICLE 2

Article 26 of the Agreement is omitted and the following Article is substituted:

"Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is forseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic law concerning taxes referred to in Article 2, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable by the competent authority under the law or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE 3

Article 27, Article 28 and Article 29 of the Agreement are renumbered as Article 28, Article 29 and Article 30 respectively.

ARTICLE 4

The Agreement is amended by inserting:

"Article 27

ASSISTANCE IN COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes referred to in Article 2, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the law of that State and is owed by a person who, at that time, cannot, under the law of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its law applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim

in accordance with the provisions of its law as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the law of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the law of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the law of that State and is owed by a person who, at that time, cannot, under the law of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;

b) to carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its law or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;

e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles."

ARTICLE 5

With reference to Articles 10, 11 and 12, if in any future Agreement with any other State, New Zealand should limit its taxation at source of dividends, interest or royalties to a rate lower than the one provided for in any of those Articles, the Government of New Zealand shall without undue delay inform the Government of Australia and shall enter into negotiations with the Government of Australia with a view to providing the same treatment.

ARTICLE 6

1. The Government of New Zealand and the Government of Australia shall notify each other in writing through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Protocol.

2. The Protocol, which shall form an integral part of the Agreement, shall enter into force on the date of the last notification, and thereupon the Protocol shall have effect.

3. Notwithstanding paragraph 2, Article 4 shall have effect from the date agreed in a subsequent exchange of notes through the diplomatic channel.

In WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Melbourne in duplicate this 15th day of November 2005 in the English language.

FOR THE GOVERNMENT OF NEW ZEALAND

FOR THE GOVERNMENT OF AUSTRALIA