



New Zealand Treaty Series 2011, No. 16
Ministry of Foreign Affairs and Trade

AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE COOK ISLANDS ON THE ALLOCATION OF
TAXING RIGHTS WITH RESPECT TO CERTAIN INCOME OF INDIVIDUALS
AND TO ESTABLISH A MUTUAL AGREEMENT PROCEDURE IN RESPECT
OF TRANSFER PRICING ADJUSTMENTS

Rarotonga, 09 July 2009
[Entered into force for New Zealand 13 December 2011]

Presented to the House of Representatives

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE COOK ISLANDS ON THE ALLOCATION OF TAXING
RIGHTS WITH RESPECT TO CERTAIN INCOME OF INDIVIDUALS AND TO
ESTABLISH A MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER
PRICING ADJUSTMENTS

The Government of New Zealand and the Government of the Cook Islands (“the Contracting Parties”),

HAVING REGARD to the principles underpinning the special relationship of partnership and free association between the Contracting Parties,

RECOGNISING that the Contracting Parties have concluded an Agreement on the Exchange of Information with Respect to Taxes, and

DESIRING to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

HAVE AGREED AS FOLLOWS:

Article 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

Article 2

TAXES COVERED

1. The existing taxes to which this Agreement shall apply are:
 - a) In the Cook Islands, the income tax; (hereinafter referred to as “Cook Islands tax”).
 - b) In New Zealand, the income tax; (hereinafter referred to as “New Zealand tax”).
2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered in this Agreement.
3. This Agreement shall not apply to taxes imposed by municipalities, local authorities or possessions of a Contracting Party.

Article 3*DEFINITIONS*

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) The term “the Cook Islands” means the territory of the Cook Islands;
 - b) The term “New Zealand” means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
 - c) The term “competent authority” means, in the case of the Cook Islands, the Collector of Inland Revenue or an authorised representative of the Collector and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
 - d) The term “Contracting Party” means the Cook Islands or New Zealand, as the context requires;
 - e) The term “person” includes an individual, a company, and any other body of persons;
 - f) The term “tax” means Cook Islands tax, or New Zealand tax, as the context requires; and
 - g) The term “transfer pricing adjustment” means an adjustment made by the competent authority of a Contracting Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Contracting Party regarding transfer pricing.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context requires, have the meaning that it has at that time under the law of the Contracting Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 4*RESIDENT*

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means:
 - a) In the case of the Cook Islands, a person who is a resident of the Cook Islands for the purpose of Cook Islands tax; and
 - b) In the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax.

2. A person not a resident of a Contracting Party for the purposes of this Agreement if the person is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.
3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:
 - a) The individual shall be deemed to be a resident only of the Contracting Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Contracting Party with which the individual's personal and economic relations are closer (centre of vital interests);
 - b) If the Contracting Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Contracting Party in which the individual has an habitual abode;
 - c) If the Contracting Party in which the individual has an habitual abode cannot be determined, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.
4. Where by reason of paragraph 1 a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Contracting Party in which its place of effective management is situated.

Article 5

PENSIONS

1. Pensions (including government service pensions) and other similar remuneration paid to an individual who is a resident of a Contracting Party in consideration of past employment shall be taxable only by that Contracting Party.
2. Pensions and other payments made under the social security legislation of a Contracting Party to an individual who is a resident of the other Contracting Party shall be taxable only by that other Contracting Party.
3. However, paragraphs 1 and 2 shall not apply where the pension, payment or other similar remuneration is not subject to tax by the Contracting Party of which the individual is a resident.

Article 6

GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party to an individual in respect of services rendered to that Contracting Party shall be taxable only by that Contracting Party.

- b) However, such salaries, wages and other similar remuneration shall be taxable only by the other Contracting Party if the services are rendered in that Contracting Party and the individual is a resident of that Contracting Party who did not become a resident of that Contracting Party solely for the purpose of rendering their services.
2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting Party may be taxed in accordance with the laws of that Contracting Party.

Article 7

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is temporarily present in the first-mentioned Contracting Party solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed by that Contracting Party, provided that such payments arise from sources outside the Contracting Party.

Article 8

MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING ADJUSTMENTS

1. Where a resident of a Contracting Party considers the actions of the other Contracting Party result or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Contracting Party. The case shall be presented within 3 years of the first notification of the adjustment.
2. The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Contracting Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

Article 9

EXCHANGE OF INFORMATION

The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the *Agreement between the Government of New Zealand and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes* (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Contracting Party).

Article 10***ENTRY INTO FORCE***

The Contracting Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided the Agreement between the Government of New Zealand and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes is in force, thereupon have effect:

- a) In respect of the Cook Islands tax, for any year of income beginning on or after 1 January in the calendar year following the date on which this Agreement enters into force; and
- b) In respect of New Zealand tax, for any income year beginning on or after 1 April following the date on which this Agreement enters into force.

Article 11***TERMINATION***

1. This Agreement shall continue in force indefinitely, but either of the Contracting Parties may give to the other Contracting Party written notice of termination.
2. Such termination shall become effective:
 - a) In respect of the Cook Islands tax, in the year of the income beginning on or after 1 January in the calendar year following that in which the notice of termination is given, and
 - b) In respect of the New Zealand tax, in the income year beginning on or after 1 April following that in which notice of the termination is given.
3. Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the diplomatic channel of written notice of termination of the Agreement for the Exchange of Information with Respect to Taxes between the Contracting Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of 3 months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE AT Rarotonga, Cook Islands, this 9th day of July, 2009, in duplicate in the English language.

For the Government of New Zealand

For the Government of the Cook Islands

[Signatures not reproduced]