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Ministry of Foreign Affairs and Trade

AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF SAMOA 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

Apia, 24 August 2010
[Entered into force for New Zealand 26 March 2012]

Presented to the House of Representatives

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MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING
ADJUSTMENTS

The Government of New Zealand and the Government of Samoa (“the Contracting States”),

RECOGNISING that the Contracting States 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 States.

Article 2

TAXES COVERED

1. The existing taxes to which this Agreement shall apply are:
 - a) in New Zealand, the income tax; (hereinafter referred to as “New Zealand tax”); and
 - b) in Samoa, income tax; (hereinafter referred to as “Samoa 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 States shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.
3. This Agreement shall not apply to taxes imposed by municipalities, local authorities or possessions of a Contracting State.

Article 3

DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) 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;
 - b) the term “Samoa” means the Independent State of Samoa and the territorial waters thereof;
 - c) the term “competent authority” means in the case of New Zealand, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Samoa, the Minister of Revenue or an authorised representative of the Minister of Revenue;
 - d) the term “Contracting State” means New Zealand or Samoa as the context requires;
 - e) the term “national”, in relation to a Contracting State, means any individual possessing the nationality or citizenship of that State;
 - f) the term “person” includes an individual, a company and any other body of persons;
 - g) the term “tax” means New Zealand tax or Samoan tax as the context requires; and
 - h) the term “transfer pricing adjustment” means an adjustment made by the competent authority of a Contracting State to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that State regarding transfer pricing.
2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State, for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” means:
 - a) in the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax; and
 - b) in the case of Samoa, a person who is a resident of Samoa for the purposes of Samoan tax.

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

Article 5

PENSIONS

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

Article 6**GOVERNMENT SERVICE**

1. a) Salaries, wages and other similar remuneration (other than pensions) paid by the Government of a Contracting State to an individual in respect of services rendered to that Government shall be taxable only in that State.
- b) However, such payments shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by the Government referred to in paragraph 1 may be taxed in accordance with the laws of a Contracting State.

Article 7**STUDENTS**

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

Article 8**MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING
ADJUSTMENTS**

1. Where a resident of a Contracting State considers the actions of the other Contracting State 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 States, present a case to the competent authority of the first-mentioned State. The case shall be presented within three 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 State 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 States 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 Samoa on the Exchange of Information with Respect to Taxes*.

Article 10**ENTRY INTO FORCE**

The Government of New Zealand and the Government of Samoa shall notify each other in writing through the diplomatic 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 Samoa on the Exchange of information with Respect to Taxes* is in force, thereupon have effect:

- a) 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; and
- b) in respect of Samoan tax, for any income year beginning on or after 1 January following the date on which this Agreement enters into force.

Article 11**TERMINATION**

1. This Agreement shall continue in effect indefinitely, but either of the Contracting States may give to the other Contracting State through the diplomatic channel written notice of termination.
2. Such termination shall become effective:
 - a) in respect of New Zealand tax, in the income year beginning on or after 1 April in the calendar year following that in which the notice of termination is given;
 - b) in respect of Samoan tax, in the income year beginning on or after 1 January in the calendar year following that in which the notice of 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 Between the Government of New Zealand and the Government of Samoa on the Exchange of information with Respect to Taxes*, terminate and cease to be effective on the first day of the month following the expiration of a period of 6 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 Apia, this 24th day of August, 2010, in duplicate.

For the Government of New Zealand

For the Government of Samoa

[Signatures not reproduced]