



Double Tax Agreements (Isle of Man) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 8th day of June 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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**Agreement relating to taxing rights and transfer
pricing adjustments**

Order

- 1 Title**

This order is the Double Tax Agreements (Isle of Man) Order 2010.
 - 2 Commencement**

This order comes into force on the 28th day after the date of its notification in the *Gazette*.
 - 3 Commencement of agreements**
 - (1) The agreement set out in Schedule 1 comes into force on the date referred to in Article 12 of the agreement as the date on which the agreement enters into force.
 - (2) The agreement set out in Schedule 2 comes into force on the date referred to in Article 10 of the agreement as the date on which the agreement enters into force.
 - 4 Purposes**

The arrangements specified in the agreements set out in Schedules 1 and 2 have been negotiated with the Isle of Man for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.
 - 5 Arrangements to have effect**

The arrangements specified in each agreement set out in Schedules 1 and 2 have effect according to the respective agreement.
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Schedule 1

cls 3(1), 4, 5

**Agreement relating to exchange of
information**

Agreement between the Government of New Zealand and the Government of the Isle of Man on the exchange of information with respect to taxes

Whereas New Zealand and the Isle of Man (“the Parties”) recognise that present legislation already provides for co-operation and the exchange of information in criminal tax matters;

Whereas the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that the Isle of Man under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with New Zealand;

Whereas the Isle of Man on the 13th December 2000 entered into a political commitment to the OECD’s principles of effective exchange of information and actively participated in the drafting of the Organisation for Economic Co-operation and Development Model Agreement on Exchange of Information on Tax Matters;

Whereas the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes;

Now, therefore, the Parties have agreed to conclude the following Agreement, which contains obligations on the part of the Parties only:

Article 1**Object and scope of this Agreement**

The Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, enforcement, recovery or collection of such taxes, with respect to persons liable to such taxes, or to the investigation or prosecution of tax matters in

Article 1—*continued*

relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable. The Requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

Article 2

Jurisdiction

The Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

Article 3

Taxes covered

- 1 The existing taxes which are the subject of this Agreement are:
 - (a) in the Isle of Man, taxes on income or profits; and
 - (b) in New Zealand, the income tax.
- 2 This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. This Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Parties. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.
- 3 This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Party.

Article 4

Definitions

- 1 For the purposes of this Agreement, unless otherwise defined:

Article 4—*continued*

- (a) the term “collective investment scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment scheme” means any collective investment scheme provided the units, shares or other interests in the scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (c) the term “competent authority” means, in the case of the Isle of Man, the Assessor of Income Tax or an authorised delegate and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
- (d) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (e) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- (f) the term “information” means any fact, statement or record in any form whatever;
- (g) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- (h) the term “Isle of Man” means the island of the Isle of Man;
- (i) 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 inter-

Article 4—*continued*

- national law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
- (j) the term “Party” means the Isle of Man or New Zealand as the context requires;
 - (k) the term “person” includes an individual, a company and any other body of persons;
 - (l) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - (m) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or “sold by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
 - (n) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
 - (o) the term “Requested Party” means the Party requested to provide information;
 - (p) the term “Requesting Party” means the Party submitting a request to, or having received information from, the Requested Party; and
 - (q) the term “tax” means any tax to which this Agreement applies.
- 2 As regards the application of this Agreement at any time by a Party, 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 Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of information upon request

- 1 The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Art-

Article 5—*continued*

- icle 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the territory of the Requested Party.
- 2 If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures necessary to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
- 3 If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
- 4 Each Party shall ensure that it has the authority, for the purposes referred to in Article 1, to obtain and provide, through its competent authority and upon request:
- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - (b) (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations, “Anstalten” and other persons, and within the constraints of Article 2 any other persons in an ownership chain, including in the case of collective investment schemes, information on shares, units and other interests;
 - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries.
- 5 This Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

Article 5—*continued*

- 6 The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:
- (a) the identity of the person under examination or investigation;
 - (b) a statement of the information sought including its nature and the form in which the Requesting Party wishes to receive the information from the Requested Party;
 - (c) the tax purpose for which the information is sought;
 - (d) reasonable grounds for believing that the information requested is held in the territory of the Requested Party or is in the possession of or obtainable by a person within the jurisdiction of the Requested Party;
 - (e) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
 - (f) a statement that the request is in conformity with the law and administrative practices of the Requesting Party, that if the requested information was within the jurisdiction of the Requesting Party then the competent authority of the Requesting Party would be able to obtain the information under the laws of the Requesting Party or in the normal course of administrative practice and that the information request is in conformity with this Agreement;
 - (g) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
- 7 The competent authority of the Requested Party shall acknowledge receipt of the request to the competent authority of the Requesting Party within 60 days of receiving the request, advise if there are any unexpected delays in obtaining the requested information within 90 days of receiving the request, and shall use its best endeavours to forward the requested information to the Requesting Party with the least possible delay.

Article 6

Tax examinations abroad

- 1 The Requested Party may, to the extent permitted under its domestic laws, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the meeting with the individuals concerned.
- 2 At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may allow representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.
- 3 If the request referred to in paragraph 2 is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Requested Party conducting the examination.

Article 7

Possibility of declining a request

- 1 The Requested Party shall not be required to obtain or provide information that the Requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.
- 2 The provisions of this Agreement shall not impose on a Party the obligation to provide information subject to legal privilege or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade

Article 7—*continued*

process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

- 3 The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
- 4 A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.
- 5 The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

Article 8

Confidentiality

- 1 All information received by the competent authorities of the Parties shall be kept confidential. Such information may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Requesting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the Requested Party.
- 2 The information provided to the Requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 9

Costs

The incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Parties.

Article 10

Implementation legislation

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 11

Mutual agreement procedure

- 1 Where difficulties or doubts arise between the Parties regarding the application or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.
- 2 The Parties may also agree on other forms of dispute resolution.

Article 12

Entry into force

- 1 This Agreement shall enter into force when each Party has notified the other in writing through the appropriate channel of the completion of its necessary internal procedures for entry into force.
- 2 Upon entry into force, the provisions of this Agreement shall have effect:
 - (a) for criminal tax matters on that date; and
 - (b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 13 Termination

- 1 This Agreement shall remain in force until terminated by either Party.
- 2 Either Party may terminate this Agreement by giving notice of termination in writing through the appropriate channel. Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of notice of termination by the other Party.
- 3 Notwithstanding any termination of this Agreement, the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

DONE at London, United Kingdom this 27th day of July, 2009, in duplicate in the English language.

For the Government of
New Zealand:
Derek Leask

New Zealand High
Commissioner to the
United Kingdom of Great Britain
and Northern Ireland

For the Government of the
Isle of Man:
Honourable Allan Robert Bell
MHK
Minister of the Treasury

Schedule 2

cls 3(2), 4, 5

**Agreement relating to taxing rights and
transfer pricing adjustments**

Agreement between the Government of New Zealand and the Government of the Isle of Man 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

The Government of New Zealand and the Government of the Isle of Man (“the Parties”),

Recognising that the 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 Parties.

Article 2**Taxes covered**

- 1 The existing taxes to which this Agreement shall apply are:
 - (a) in the Isle of Man, taxes on income or profits;
(hereinafter referred to as “Manx 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 Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

Article 2—*continued*

- 3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Party.

Article 3
Definitions

- 1 For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term “competent authority” means in the case of the Isle of Man, the Assessor of Income Tax or an authorised delegate and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
 - (b) the term “Isle of Man” means the island of the Isle of Man;
 - (c) the term “Party” means the Isle of Man or New Zealand, as the context requires;
 - (d) the term “national”, in relation to a Party, means any individual possessing the nationality or citizenship of that Party;
 - (e) 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;
 - (f) the term “person” includes an individual, a company and any other body of persons;
 - (g) the term “tax” means Manx tax or New Zealand tax, as the context requires; and
 - (h) the term “transfer pricing adjustment” means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.
- 2 As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context

Article 3—*continued*

otherwise requires, have the meaning that it has at that time under the law of that Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4
Resident

- 1 For the purposes of this Agreement, the term “resident of a Party” means:
 - (a) in the case of the Isle of Man, a person who is a resident for the purposes of Manx 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 is not a resident of a Party for the purposes of this Agreement if the person is liable to tax in that Party in respect only of income from sources in that 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 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 Party with which the individual’s personal and economic relations are closer (centre of vital interests);
 - (b) if the 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 Party of which the individual is a national;
 - (c) if the individual is a national of both Parties or of neither of them, 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

Article 4—*continued*

be a resident only of the 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 Party in consideration of past employment shall be taxable only in that Party.
- 2 Pensions and other payments made under the social security legislation of a Party to an individual who is a resident of the other Party shall be taxable only in that other Party.
- 3 However, paragraphs 1 and 2 of this Article shall not apply where the pension, payment or other remuneration is not subject to tax in the Party 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 the Isle of Man to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from New Zealand tax if the individual is not resident in New Zealand or is resident in New Zealand solely for the purposes of rendering those services.
- (b) Salaries, wages and other similar remuneration (other than pensions) paid by the Government of New Zealand to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from Isle of Man tax if the individual is not resident in the Isle of Man or is resident in the Isle of Man solely for the purposes of rendering those services.
- 2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration (other than pensions) paid in

Article 6—*continued*

respect of services rendered in connection with any trade or business carried on by a Party may be taxed in accordance with the laws of a Party.

Article 7

Students

Payments which a student or business apprentice, who is or was immediately before visiting a Party a resident of the other Party and who is temporarily present in the first-mentioned Party 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 Party, provided such payments arise from sources outside that Party.

Article 8

Mutual agreement procedure in respect of
transfer pricing adjustments

- 1 Where a resident of a Party considers the actions of the other Party results 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 Party. 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 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 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 pro-

Article 9—*continued*

visions of the *Agreement between the Government of the Isle of Man and the Government of New Zealand 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 Party).

Article 10

Entry into force

The 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 the Isle of Man and the Government of New Zealand on the Exchange of Information with Respect to Taxes* is in force between the Parties, thereupon have effect:

- (a) in respect of Manx tax, for any year of income beginning on or after 6 April in the calendar year following that in which this Agreement enters into force; and
- (b) in respect of New Zealand tax, for any year of income beginning on or after 1 April in the calendar year following that in which this Agreement enters into force.

Article 11

Termination

- 1 This Agreement shall continue in effect indefinitely, but either of the Parties may give to the other Party through the appropriate channel written notice of termination.
- 2 Such termination shall become effective:
 - (a) in respect of Manx tax, for any year of income beginning on or after 6 April in the calendar year following that in which the notice of termination is given;
 - (b) in respect of New Zealand tax, in the year of income beginning on or after 1 April in the calendar year following that in which the notice of termination is given.

Article 11—*continued*

- 3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the appropriate channel of written notice of termination of the *Agreement between the Government of the Isle of Man and the Government of New Zealand 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 London, United Kingdom this 27th day of July, 2009, in duplicate in the English language.

For the Government of
New Zealand:
Derek Leask

New Zealand High
Commissioner to the
United Kingdom of Great Britain
and Northern Ireland

For the Government of the
Isle of Man:
Honourable Allan Robert Bell
MHK
Minister of the Treasury

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the 28th day after the date of its notification in the *Gazette*, gives effect to the following agreements between New Zealand and the Isle of Man:

- an agreement on the exchange of information between the parties for the purpose of administering and enforcing domestic law relating to taxes;
- an agreement 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.

Each agreement comes into force on the date when the parties have notified each other that domestic procedures for bringing the agreement into force have been completed.

Once they have entered into force, the agreements have effect in relation to the exchange of information relating to taxes, the allocation of taxing rights, and transfer pricing adjustments despite anything in the Income Tax Act 2007, any other Inland Revenue Act, the Official Information Act 1982, or the Privacy Act 1993.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 10 June 2010.

This order is administered by the Inland Revenue Department.
