Reprint
as at 13 February 1981

Double Taxation Relief (French Republic) Order 1981

(SR 1981/20)

David Beattie, Governor-General

Order in Council

At the Government Buildings at Wellington this 9th day of February 1981

Present:
The Right Hon R D Muldoon presiding in Council

Pursuant to section 294 of the Income Tax Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

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Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Inland Revenue Department.

Schedule 3

Convention between the Government of New Zealand and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

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Order

1 Title

(1) This order may be cited as the Double Taxation Relief (French Republic) Order 1981.

(2) This order shall come into force on 1 April 1982.

2 Giving effect to convention

It is hereby declared that the arrangements specified in the convention set out in the Schedule, being arrangements that have been made with the Government of the French Republic with a view to affording relief from double taxation in relation to income tax and excess retention tax imposed under the Income Tax Act 1976 and the income tax and corporation tax imposed by the laws of the French Republic, shall in relation to income tax and excess retention tax imposed under that Act, and notwithstanding anything in that Act or any other enactment, have effect according to the tenor of the convention.

Schedule
Convention between the Government of New Zealand and the Government of the French Republic 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 the French Republic

desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1
Personal scope

This Convention shall apply to persons who are residents of one or both of the States.

Article 2
Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of a State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of personal or real property.
3. The existing taxes to which the Convention shall apply are:
   a) in the case of France:
      (i) the income tax;
      (ii) the corporation tax;
      including any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes; (hereinafter referred to as "French tax");
   b) in the case of New Zealand:
      (i) the income tax, but not the bonus issue tax;
      (ii) the excess retention tax; (hereinafter referred to as "New Zealand tax").

Article 2—*continued*

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify each other of important changes which have been made in their respective taxation laws.

Article 3
General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
   a) the terms "a State" and "the other State" mean France or New Zealand, as the case may be;
   b) the term "person" includes an individual, a company and any other body of persons;
   c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
   d) the terms "enterprise of a State" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of a State and an enterprise carried on by a resident of the other State;
   e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a State, except when the ship or aircraft is operated solely between places in the other State;
   f) the term "national" means:
      (i) in the case of France:
         – any individual possessing the French nationality, and
         – any legal person, partnership or association deriving its status as such from the law in force in France;
      (ii) in the case of New Zealand:
         – any individual possessing New Zealand citizenship, and

Article 3—*continued*

– any legal person, partnership or association deriving its status as such from the law in force in New Zealand.

g) the term "competent authority" means:

(i) in the case of France, the Minister of the Budget or his authorised representative;

(ii) in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative.

2. In the Convention, the terms "French tax" and "New Zealand tax" do not include any amount which represents a penalty or interest imposed under the law of either State relating to the taxes to which the Convention applies by virtue of Article 2.

3. As regards the application of the Convention by a State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4
Resident

1. For the purposes of this Convention, the term "resident of a State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to

Article 4—*continued*

be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5
Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

Article 5—*continued*

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. An enterprise of a State shall be deemed to have a permanent establishment in the other State if:

a) it carries on supervisory activities in that other State for more than twelve months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State; or

b) substantial equipment or machinery is for more than twelve months in that other State being used or installed under a contract concluded by the enterprise.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 7 applies—is acting on behalf of an enterprise and has, and habitually exercises, in a State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make

Article 5—*continued*

this fixed place of business a permanent establishment under the provisions of that paragraph.

7. An enterprise shall not be deemed to have a permanent establishment in a State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a State controls or is controlled by a company which is a resident of the other State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6
Income from real property

1. Income derived by a resident of a State from real property (including income from agriculture or forestry) situated in the other State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

Article 7
Business profits

1. The profits of an enterprise of a State shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to the permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a State carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provi-

Article 7—*continued*

sions of those Articles shall not be affected by the provisions of this Article.

Article 8
Shipping and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9
Associated enterprises

Where

a) an enterprise of a State participates directly or indirectly in the management, control or capital of an enterprise of the other State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a State and an enterprise of the other State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a State to a resident of the other State may be taxed in that other State.

2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. a) A resident of New Zealand who receives from a company which is a resident of France dividends which, if received by a resident of France, would entitle such resident to a tax credit (avoir fiscal), shall be entitled from the French Treasury to a payment equal to such tax credit (avoir fiscal) subject to the deduction of tax as provided for under paragraph 2 of this Article.

   b) The provisions of subparagraph a) of this paragraph shall apply only to a resident of New Zealand who is:
      (i) an individual, or
      (ii) a company which holds directly or indirectly less than 10 per cent of the capital of the French company paying the dividends;

   c) The provisions of subparagraph a) of this paragraph shall not apply if the recipient of the payment from the French Treasury provided for in subparagraph a) of this paragraph is not subject to New Zealand tax in respect of the payment;

   d) Payments from the French Treasury provided for under subparagraph a) of this paragraph shall be deemed to be dividends for the purposes of this Convention.

4. The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the taxation law of the State of which the Company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a State,

Article 10—*continued*

carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. A resident of New Zealand who receives dividends paid by a company which is a resident of France and who is not entitled to the payment provided for in paragraph 3 with respect to such dividends may obtain the refund or the prepayment (précompte) relating to such dividends in the event it has been paid by such company. Such refund shall be taxable in France according to the provisions of paragraph 2. The gross amount of the prepayment (précompte) refunded shall be deemed to be dividends for the purposes of the provisions of the Convention.

7. Where a company which is a resident of a State derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

8. Where a company which is a resident of New Zealand has a permanent establishment in France, it may be subjected therein to any withholding tax provided by the laws of France but the tax shall not exceed 15 percent of two-thirds of the profits of the permanent establishment after payment of the French corporation tax on those profits.

Article 11
Interest

1. Interest arising in a State and paid to a resident of the other State may be taxed in that other State.
2. However, such interest may also be taxed in the State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a State shall be exempt from tax in that State if:
   a) the interest is paid to the other State or a local authority thereof or any agency wholly owned by that other State or a local authority thereof; or
   b) the interest is paid to any person who is a resident of a State in respect of a loan made or guaranteed, or of a credit made or guaranteed, by the other State or by any agency of that other State.
4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a State carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a State when the payer is that State itself, a political subdivision, a local authority, a statutory body or a resident of that State. Where, however,

Article 11—*continued*

the person paying the interest, whether he is a resident of a State or not, has in a State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 12
Royalties

1. Royalties arising in a State and paid to a resident of the other State may be taxed in that other State.
2. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and works recorded for broadcasting or television, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

Article 12—*continued*

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a State, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a State when the payer is that State itself, a political subdivision, a local authority, a statutory body or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a State or not has in a State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 13
Alienation of property

1. Income or gains derived by a resident of a State from the alienation of real property referred to in Article 6 and situated in the other State may be taxed in that other State.

Article 13—*continued*

2. Income or gains from the alienation of personal property forming part of the business property of a permanent establishment which an enterprise of a State has in the other State or of personal property pertaining to a fixed base available to a resident of a State in the other State for the purpose of performing independent personal services including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Income or gains from the alienation of ships or aircraft operated in international traffic or personal property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated.
4. Income or gains from the alienation of shares of a company, the property of which consists principally of real property situated in a State, may be taxed in that State.
5. Income or gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the State of which the alienator is a resident.

Article 14
Independent personal services

1. Income derived by a resident of a State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
Dependent personal services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a State in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if:
   a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
   b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
   c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the State in which the place of effective management of the enterprise is situated.

Article 16
Directors' fees

Directors' fees and other similar payments derived by a resident of a State in his capacity as a member of the board of directors of a company which is a resident of the other State may be taxed in that other State.

Article 17
Artistes and athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a State as an entertainer, such as a theatre, motion picture, radio or television artiste or a musician,

Article 17—*continued*

or as an athlete, from his personal activities as such exercised in the other State may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person that income may, notwithstanding the provisions of Article 7, 14 and 15 be taxed in the State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, remuneration or profits, and wages, salaries and other similar income derived by an entertainer or an athlete, who is a resident of a State, from his personal activities as such exercised in the other State, shall be taxable only in the first-mentioned State if these activities in the other State are supported substantially by public funds of the first-mentioned State, one of its political subdivisions or local authorities or of a statutory body thereof.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a State accrues not to the entertainer or athlete himself but to another person, that income, notwithstanding the provisions of Articles 7, 14 and 15 shall be taxable only in the other State, if that other person is supported substantially by public funds of that other State, one of its political subdivisions or local authorities or of a statutory body thereof, or if that other person is a non-profit organisation which is a resident of that other State.

Article 18
Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a State shall be taxable only in that State.

3. Notwithstanding anything in this Convention

Article 18—*continued*

a) the pensions referred to in paragraph (4) of Article 81 of the French General Tax Code shall be exempt from New Zealand tax so long as they are exempt from French tax;

b) the pensions and other payments referred to in paragraph (10) of section 61 of the Income Tax Act 1976 shall be exempt from French tax so long as they are exempt from New Zealand tax.

Article 19
Government service

1. a) Remuneration, other than a pension, paid by a State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   b) However, such remuneration shall be taxable only in the other 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. a) Any pension paid by, or out of funds created by, a State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   b) However, such pension shall be taxable only in the other State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a State or a political subdivision or a local authority thereof.

Article 20
Students

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

Article 21
Teachers and researchers

1. Remuneration which a teacher or a researcher who is or was immediately before visiting a State a resident of the other State, and who is present in the first-mentioned State solely for the purpose of teaching or engaging in research, derives in respect of such activities shall not be taxed in that State for a period not exceeding two years from the commencement of such activities.
2. The provisions of paragraph 1 shall not apply to remuneration derived in respect of research undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 22
Other income

1. Items of income of a resident of a State which are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. However, if such income is derived by a resident of a State from sources in the other State, such income may also be taxed in that other State and according to the law of that State.

Article 23
Methods for elimination of double taxation

Double taxation shall be avoided in the following manner:

1. In the case of France:

Article 23—*continued*

a) Income other than that referred to in subparagraph b) below shall be exempt from the French taxes referred to in subparagraph a) of paragraph 3 of Article 2 if the income is taxable in New Zealand under this Convention.

b) Income referred to in Articles 10, 11, 12, 14, 16, 17 and 22 received from New Zealand may be taxed in France in accordance with the provisions of those Articles, on its gross amount. The New Zealand tax levied on such income shall entitle residents of France to a tax credit which corresponds to the amount of the New Zealand tax levied but which shall not exceed the amount of French tax attributable to such income. Such credit shall be allowed against taxes referred to in sub-paragraph a) of paragraph 3 of Article 2, in the bases of which such income is included.

c) Notwithstanding the provisions of sub-paragraphs a) and b), French tax shall be computed on income chargeable in France by virtue of this Convention at the rate appropriate to the total of the income chargeable in accordance with the French laws.

2. In the case of New Zealand:

Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle hereof), French tax paid under the law of France and consistently with this Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in France (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

Article 24
Mutual agreement procedure

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the States.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties arising as to the application of the Convention.

   In particular, the competent authorities of the States may consult together to endeavour to agree:

   a) to the same attribution in both States of the profits attributable to a permanent establishment situated in a State of an enterprise of the other State;

   b) to the same allocation of income between a resident of a State and an associated person referred to in Article 9 who is a resident of the other State.

   They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the States.

Article 24—*continued*

5. The competent authorities of the States shall by mutual agreement settle the mode of application of the Convention and, especially, the requirements to which the residents of a State shall be subjected in order to obtain, in the other State, the tax reliefs or exemptions provided for by the Convention.

Article 25
Exchange of information

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. 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.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a State the obligation:
   a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State;
   b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other 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).

Article 26
Diplomatic agents and consular officers

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, of members of consular missions, or of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.
2. Notwithstanding the provisions of Article 4 an individual who is a member of a diplomatic mission, consular post or permanent mission of a State which is situated in the other State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if:
   a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State; and
   b) he is liable in the sending State to the same obligations in relation to tax on his total world wide income as are residents of that State.
3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a State and not treated in either State as residents in respect of taxes on income.

Article 27
Territorial scope

1. This Convention shall apply:
   a) in the case of France, to the European and Overseas Departments of the French Republic, and to any area outside the territorial sea of those Departments which is, in accordance with international law, an area within which France may exercise rights with respect to the sea-bed and subsoil and their natural resources.
   b) in the case of New Zealand, to the metropolitan territory of New Zealand (including the outlying islands) but not including the Cook Islands, Niue or Tokelau; the Convention also applies to areas adjacent to the territorial

Article 27—*continued*

sea of the metropolitan territory of New Zealand (including the outlying islands) which by New Zealand legislation have been, or may hereafter be, designated as areas over which New Zealand has, in accordance with international law, sovereign rights for the purposes of exploring them or of exploring, exploiting, conserving and managing the natural resources of the sea, or of the sea-bed and subsoil.

2. The Convention may be extended, either in its entirety or with any necessary modifications, to the Overseas Territories of the French Republic or to any territory for whose international relations New Zealand is responsible, which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

3. Unless otherwise agreed by both States, the termination of the Convention by one of them under Article 29 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory to which it has been extended under this Article.

Article 28
Entry into force

Each of the States shall notify to the other the completion of the procedure required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of exchange of notes and shall thereupon have effect:

a) in New Zealand:

for any income year beginning on or after 1st April in the calendar year next following that in which the exchange of notes takes place;

b) in France:

Article 28—*continued*

in respect of taxes for the assessment year beginning on the 1st January following that in which the exchange of notes takes place and subsequent years.

Article 29
Termination

This Convention shall continue in effect indefinitely but either of the States may, on or before 30th June in any calendar year after a period of five years from the entry into force of the Convention give notice of termination to the other State and, in such event the Convention shall cease to be effective:

a) in New Zealand:

for any income year beginning on or after 1st April in the calendar year next following that in which the notice of termination is given;

b) in France:

in respect of taxes for the assessment year beginning on the 1st January following that in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, duly authorised to that effect, have signed this Convention.

DONE at Paris, this thirtieth day of November, 1979, in duplicate, in the English and French languages, both texts being equally authoritative.

For the Government of
New Zealand
B E Talboys
Minister of Foreign Affairs

For the Government of
the French Republic
Olivier Stirn
Secretary of State to the
Minister for Foreign Affairs

Protocol

At the time of signature of the Convention between the Government of the French Republic and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

1. In respect of paragraph 1 e) of Article 3, the term "international traffic" also means any transport by a container where such transport is incidental to transport in international traffic.
2. In respect of Article 6, income from shares, rights or participations in a company or a legal person owning real property situated in France, which, under the French laws, is subjected to the same taxation treatment as income from real property, may be taxed in France.
3. a) In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of this permanent establishment are not determined on the basis of the total amount received by the enterprise, but are determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business.

   In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment the profits of such permanent establishment are not to be determined on the basis of the total amount of the contract, but are to be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent

Protocol—*continued*

establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

b) In respect of Articles 7 and 22 nothing in these Articles shall affect the operation of any law of a State relating to the computation of the taxable profits from any insurance business provided that if the relevant law in force in either State at the date of signature of the Convention is varied (otherwise than in minor respects so as not to affect its general character) the States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

4. In respect of the provisions of paragraph 7 of Article 10, the expression "tax on the company's undistributed profits" shall not include the bonus issue tax referred to in paragraph 3 of Article 2.

5. Notwithstanding the provisions of paragraph 3 of Article 12, payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply except to the extent the amounts of such payments are based on production, sales, performance, results or any similar basis related to the utilisation of that equipment.

6. In respect of paragraph 3 of Article 12, payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blueprints related thereto, or for consultant or supervisory services shall be deemed not to be payments received as a consideration for information concerning industrial, commercial or scientific experience.

Protocol—*continued*

7. a) In respect of Article 13, gains from the alienation of shares, rights or participations in a company or a legal person owning real property situated in France, which, under the French laws, are subjected to the same taxation treatment as gains from the alienation of real property, may be taxed in France.

   b) Notwithstanding the provisions of paragraph 4 of Article 13, gains from the alienation of shares forming part of a substantial interest in the capital of a company which is a resident of France may be taxed in France, according to the provisions of Article 160 of the "Code général des Impôts". A substantial interest shall be deemed to exist when the alienator, alone or together with associated or related persons, holds directly or indirectly shares which together give the right to 25 per cent or more of the company profits.

8. If, at any time after the date of signature of the Convention, New Zealand shall include a non-discrimination Article in any of its double tax conventions, the Government of New Zealand shall without undue delay, inform the Government of the French Republic in writing through diplomatic channels and shall enter into negotiations with the Government of the French Republic with a view to including a non-discrimination Article in the Convention.

9. This Protocol shall remain in force as long as the Convention signed this day, between the Government of New Zealand and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall remain in force.

DONE at Paris, this thirtieth day of November, 1979, in duplicate, in the English and French languages, both texts being equally authoritative.

Protocol—*continued*

For the Government of
New Zealand
B E Talboys
Minister of Foreign Affairs

For the Government of
the French Republic
Olivier Stirn
Secretary of State to the
Minister for Foreign Affairs

P G Millen,
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 gives effect to the 1979 New Zealand – France Double Tax Convention.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 February 1981.

Contents

1 General
2 Status of reprints
3 How reprints are prepared
4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
5 List of amendments incorporated in this reprint (most recent first)

Notes

1 General

This is a reprint of the Double Taxation Relief (French Republic) Order 1981. The reprint incorporates all the amendments to the order as at 13 February 1981, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* http://www.pco.parliament.govt.nz/reprints/.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as "of this section" and "of this Act")
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as "the 1st day of January 1999" is now expressed as "1 January 1999")

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

Wellington, New Zealand:
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