



**THE DOUBLE TAXATION RELIEF (MALAYSIA) ORDER 1976,
AMENDMENT NO. 1**

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 3rd day of October 1994

Present:

THE RIGHT HON. J. B. BOLGER PRESIDING IN COUNCIL

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

ORDER

1. Title and commencement—(1) This order may be cited as the Double Taxation Relief (Malaysia) Order 1976, Amendment No. 1, and shall be read together with and deemed part of the Double Taxation Relief (Malaysia) Order 1976* (hereinafter referred to as the principal order).

(2) This order shall come into force on the 28th day after the date of its notification in the *Gazette*.

2. Giving effect to Second Protocol to Agreement—(1) Clause 2 of the principal order is hereby amended by omitting the words "First Schedule", and substituting the words "First and Second Schedules".

(2) The principal order is hereby further amended—

- (a) By omitting from the Schedule the heading “SCHEDULE”, and substituting the following headings:

“SCHEDULES

“FIRST SCHEDULE”:

- (b) By adding, as the Second Schedule, the Second Schedule set out in the Schedule to this order.

SCHEDULE

NEW SECOND SCHEDULE TO PRINCIPAL ORDER

“SECOND SCHEDULE

SECOND PROTOCOL TO THE AGREEMENT BETWEEN THE
GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF MALAYSIA
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 Malaysia;

Having regard to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Kuala Lumpur on 19 March 1976 (hereinafter referred to as “the Agreement”),

Have agreed that the following provisions shall form an integral part of the Agreement:

Article 1

Subject to Article 21 of the Agreement, a New Zealand resident deriving interest from Malaysia, being income referred to in paragraph (3) of Article 20 of the Agreement, shall not be entitled to the benefit of that paragraph where the competent authority of New Zealand considers, after consultation with the competent authority of Malaysia, that the benefit is inappropriate, having regard to:

- (a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph (3) of Article 20 for the benefit of that person or any other person;
- (b) whether any benefit accrues or may accrue to any person who is neither a New Zealand resident nor a Malaysian resident;
- (c) the prevention of fraud or the avoidance of the taxes to which the Agreement applies;
- (d) any other matter which either competent authority considers relevant in the particular circumstances of the case, including any submissions from the New Zealand resident concerned.

SCHEDULE—*continued*“SECOND SCHEDULE—*continued*”

Article 2

Article 1 of this Second Protocol shall apply to interest derived on or after 1 July 1993.

Article 3

(1) The Contracting States shall notify each other through diplomatic channels that the constitutional requirements for the entry into force of this Second Protocol have been complied with.

(2) This Second Protocol shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

DONE at Kuala Lumpur in duplicate this 14th day of July 1994 in the English language.

MALCOLM JOHN MCGOUN

DATUK CLIFFORD HERBERT

FOR THE GOVERNMENT
OF
NEW ZEALANDFOR THE GOVERNMENT
OF
MALAYSIA”MARIE SHROFF,
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 adds a Second Protocol to the 1976 New Zealand–Malaysia Double Tax Agreement. The aim of the Second Protocol is to prevent tax avoidance through the use of tax sparing, and applies to income derived on or after 1 July 1993.

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

Date of notification in *Gazette*: 6 October 1994.

This order is administered in the Inland Revenue Department.