



THE DOUBLE TAXATION RELIEF (FINLAND) ORDER 1984

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 16th day of July 1984

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL 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.

ORDER

1. Title—This order may be cited as the Double Taxation Relief (Finland) Order 1984.

2. Giving effect to Convention—It is hereby declared that the arrangements specified in the Convention set out in the Schedule to this order, being arrangements that have been made with the Government of Finland 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 taxes imposed by the laws of Finland, 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 from the 1st day of April 1985 according to the tenor of the Convention.

SCHEDULE
CONVENTION
BETWEEN THE GOVERNMENT OF NEW ZEALAND
AND
THE GOVERNMENT OF FINLAND
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 Finland,
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 Contracting States.

ARTICLE 2

TAXES COVERED

1. The existing taxes to which this Convention shall apply are:

(a) in the case of New Zealand:

the income tax and the excess retention tax;
(hereinafter referred to as "New Zealand tax");

(b) in the case of Finland:

(i) the state income tax;
(ii) the communal tax;
(iii) the church tax;
(iv) the sailors' tax; and
(v) the tax withheld at source from non-residents' income;
(hereinafter referred to as "Finnish tax").

2. 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 Contracting States shall notify each other of
any significant 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) (i) the term "New Zealand", when used in a geographical sense,
means the metropolitan territory of New Zealand (including the
outlying islands) but does not include the Cook Islands, Niue or
Tokelau; it also includes areas adjacent to the territorial sea of
the metropolitan territory of New Zealand (including the
outlying islands) which by New Zealand legislation and in

- accordance with international law have been, or may hereafter be, designated as areas over which New Zealand has 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;
- (ii) the term "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration and exploitation of the natural resources of the sea-bed and its subsoil may be exercised;
 - (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 Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (e) the term "national" means any individual possessing citizenship of a Contracting State and any legal person, partnership or association deriving its status as such from the law in force in a Contracting State;
 - (f) 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 Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (g) the term "competent authority" means:
 - (i) in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;
 - (ii) in the case of Finland, the Ministry of Finance or its authorised representative.

2. In determining for the purposes of Articles 10, 11 or 12, whether dividends, interest or royalties are beneficially owned by a resident of New Zealand, dividends, interest or royalties in respect of which a trustee is subject to tax in New Zealand shall be treated as being beneficially owned by that trustee.

3. In the Convention, the terms "New Zealand tax" and "Finnish tax" do not include any charge imposed as a penalty under the law of either Contracting State relating to the taxes to which the Convention applies by virtue of Article 2.

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

ARTICLE 4

FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of a Contracting 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. An undivided estate of a deceased person shall, for the purposes of taxation in Finland, be deemed to be a resident of the Contracting State of which the deceased was a resident at the time of his death according to the preceding sentence or the provisions of paragraph 2. However, the term "resident of a Contracting State" 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 Contracting 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 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 Contracting 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 Contracting 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;
- (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 Contracting State shall be deemed to have a permanent establishment in the other Contracting 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 State; or
- (b) substantial equipment or machinery is for more than twelve months in that other State being used by, for or under contract with 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 Contracting 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 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 Contracting 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 Contracting State controls or is controlled by a company which is a resident of the other Contracting 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 Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

- 2. (a) The term “real property” shall, subject to the provisions of sub-paragraphs (b) and (c), have the meaning which it has under the law of the Contracting State in which the property in question is situated.

(b) The term "real property" 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.

(c) Ships, boats 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of real property held by the company, the income from the direct use, letting, or use in any other form of such right of enjoyment may be taxed in the Contracting State in which the real property is situated.

5. 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.

6. The provisions of paragraph 4 shall also apply to the income from a right of enjoyment referred to in that paragraph of an enterprise and to income from such right of enjoyment used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting 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 that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting 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 Contracting 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 Contracting 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 provisions 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 Contracting 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 Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting 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 Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting 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 percent of the gross

amount of the dividends. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting 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.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting 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.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting 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 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, this term 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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a statutory body, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting 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.

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 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 Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting 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 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, 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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting 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 Contracting State when the payer is that State itself, a statutory body, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a

permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, 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 Contracting 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 Contracting State from the alienation of real property referred to in paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Income or gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights referred to in paragraph 4 of Article 6 may be taxed in the Contracting State in which the real property held by the company is situated.

3. Income or gains from the alienation of personal property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of personal property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such income or 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.

4. 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 Contracting State in which the place of effective management of the enterprise is situated.

5. Income or gains from the alienation of any property other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting 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 Contracting 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, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting 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 Contracting State in respect of an employment exercised in the other Contracting 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, or in the taxable period concerned, as the case may be, 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 Contracting 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 Contracting State in his capacity as a member of the board of directors or any other similar organ of a company (other than a partnership) which is a resident of the other Contracting 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 Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting 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 Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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 Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, and subject to the provisions of paragraph 2 of Article 19, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a statutory body or a local authority thereof to an individual in respect of services rendered to that State or body or authority shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the Contracting State of which the individual is a resident if the services are rendered in that State and the individual:
 - (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 Contracting State or a statutory body or a local authority thereof to an individual in respect of services rendered to that State or body or authority shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the Contracting State of which the individual is a resident if he is 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 Contracting State or a statutory body or a local authority thereof.

ARTICLE 20

STUDENTS

Payments which a student or business trainee, including a technical, agricultural or forestry trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting 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

OTHER INCOME

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

ARTICLE 22

FINNISH UNDIVIDED ESTATES

1. Where under the provisions of this Convention a resident of New Zealand is exempt or entitled to relief from Finnish tax, similar exemption or relief shall be applied to the undivided estate of any deceased person insofar as one or more of the beneficiaries is a resident of New Zealand.

2. Finnish tax on the undivided estate of a deceased person shall insofar as the income accrues to a beneficiary who is a resident of New Zealand be allowed as a credit against New Zealand tax payable in respect of that income, in accordance with Article 23.

3. The provisions of this Article shall not be construed as limiting the operation of paragraph 2 of Article 3.

ARTICLE 23

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In the case of New Zealand, double taxation shall be eliminated as follows:

- (a) 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), Finnish tax paid under the law of Finland and consistently with this Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Finland (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.
- (b) For the purposes of this Article, profits, income or gains of a resident of New Zealand which are taxed in Finland in accordance with the Convention shall be deemed to arise from sources in Finland.
- (c) Where a partnership is subjected to Finnish tax on income which under the Convention or under the law of New Zealand has its source in Finland, any member of that partnership who is subjected to New Zealand tax on his share of the profits of the partnership shall be allowed, as a credit against New Zealand tax, an amount equal to the same proportion of the Finnish tax paid by the partnership as his share of the profits of the partnership bears to the total profits of the partnership.

2. In the case of Finland, double taxation shall be eliminated as follows:

- (a) Where a resident of Finland derives income which, in accordance with the provisions of this Convention, may be taxed in New Zealand, Finland shall, subject to the provisions of subparagraph (b), allow as a deduction from the tax on income of that person, an amount equal to the tax on income paid in New Zealand.

Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in New Zealand.

- (b) Dividends paid by a company which is a resident of New Zealand to a company which is a resident of Finland shall be exempt from Finnish tax to the extent that the dividends would have been exempt from tax under Finnish taxation law if both companies had been residents of Finland.
- (c) Notwithstanding any other provision of the Convention, an individual who is a resident of New Zealand and under Finnish taxation law with respect to the Finnish taxes referred to in Article 2 also is regarded as a resident of Finland may be taxed in Finland. However, Finland shall allow any New Zealand tax paid on the income as a deduction from Finnish tax in accordance with the provisions of sub-paragraph (a). The provisions of this sub-paragraph shall apply only to nationals of Finland.
- (d) Where in accordance with any provisions of the Convention income derived by a resident of Finland is exempt from tax in Finland, Finland may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting 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 Contracting 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 Contracting 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 Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree to the same allocation of income between a resident of a Contracting State and any associated person, referred to in Article 9. 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 Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the Convention.

ARTICLE 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this

Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, as well as to prevent fiscal evasion. The exchange of information is not restricted by Article 1. Any information received by a Contracting 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 Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting 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 Contracting 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 AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special international agreements.

ARTICLE 27

TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any territory for whose international relations either Contracting State is responsible, which imposes 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 Contracting States in notes to be exchanged through diplomatic channels or in any manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting 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.

3. Paragraph 2 of Article 2 shall apply to any taxes imposed by any territory to which the Convention is extended under this Article.

ARTICLE 28

ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. The Convention shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall apply:

(a) in New Zealand:

to income assessable for any income year beginning on or after 1 April in the calendar year next following that in which the Convention enters into force;

(b) in Finland:

(i) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following the year in which the Convention enters into force;

(ii) in respect of other taxes on income, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the Convention enters into force.

ARTICLE 29

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination on or before 30 June in any year after the period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to apply:

(a) in New Zealand:

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

(b) in Finland:

(i) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at Helsinki this 12th day of March 1982 in the English language.

For the Government
of
New Zealand
F. O. WILSON

For the Government
of
Finland
MATTI TUOVINEN

PROTOCOL

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

At the signing today of the Convention between the Government of New Zealand and the Government of Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall form an integral part of that Convention.

It is agreed that:

1. With reference to Article 2:

for the purposes of sub-paragraph (a) of paragraph 1 of Article 2, the New Zealand income tax does not include the bonus issue tax.

2. With reference to Articles 3, 4, 8, 13 and 15:

the term "place of effective management" means, in the case of a person other than an individual, the place of that person's practical day to day management, irrespective of where the overriding control is exercised.

3. With reference to Article 6:

the term "enjoyment" means the enjoyment resulting from a right to use or occupy the real property held by the company.

4. With reference to Article 7:

because New Zealand has a special basis for taxing insurance companies and because the provisions of Article 7 are not consistent with that basis, nothing in Article 7 shall affect the operation of any law of a Contracting State relating to the calculation of income and the computation of profits from insurance, provided that if the relevant laws in force in either State at the date of signature of that Convention are varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

5. With reference to Article 10:

the term "tax on the company's undistributed profits" shall not include the New Zealand bonus issue tax.

6. With reference to Articles 10, 11 and 12:

if in any future double taxation convention with any other State, being a member of the Organisation for Economic Co-operation and Development.

(a) Finland should limit its taxation at source of dividends, or

(b) New Zealand should limit its taxation at source of dividends, interest or royalties

to a rate lower than the one provided for in any of such articles, the two Governments will undertake to review the appropriate provisions with a view to providing the same treatment.

7. If, at any time after the date of signature of this Protocol, New Zealand shall include an Article on non-discrimination in any of its double taxation conventions, the Government of New Zealand shall without undue delay inform the Government of Finland and shall enter into negotiations with the Government of Finland with a view to including such an Article in the Convention signed today.

This Protocol shall remain in force as long as the Convention, signed today, remains in force.

DONE in duplicate at Helsinki this 12th day of March 1982 in the English language.

For the Government
of
New Zealand
F. O. WILSON

For the Government
of
Finland
MATTI TUOVINEN

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 a Convention to avoid double taxation and fiscal evasion entered into between New Zealand and Finland on 12 March 1982.

The Convention applies in New Zealand in respect of the income year commencing on 1 April 1985 and in Finland in respect of the year commencing on 1 January 1985. It continues in force at least for 5 years but may then be terminated by either country.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 19 July 1984.
This order is administered in the Inland Revenue Department.