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1996/369



**THE DOUBLE TAXATION RELIEF (INDIA) ORDER 1986,
AMENDMENT NO. 1**

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 9th day of December 1996

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section BB 11 of the Income Tax Act 1994, 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 and commencement—(1) This order may be cited as the Double Taxation Relief (India) Order 1986, Amendment No. 1, and shall be read together with and deemed part of the Double Taxation Relief (India) Order 1986* (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 Protocol to Convention—(1) Clause 2 of the principal order is hereby amended by omitting the word “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

PROTOCOL

TO THE CONVENTION BETWEEN
THE GOVERNMENT OF NEW ZEALAND
AND

THE GOVERNMENT OF THE REPUBLIC OF INDIA
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 Republic of India,

Having regard to the Convention between the Government of New Zealand and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Auckland on 17th October, 1986 (hereinafter referred to as “the Convention”),

Having agreed that the following provisions shall form an integral part of the Convention:

ARTICLE 1

Notwithstanding paragraph (3) of Article 23 of the Convention, a New Zealand resident deriving income from India, being income referred to in that paragraph, shall not be deemed to have paid Indian tax in respect of such income where the competent authority of New Zealand considers, after consultation with the competent authority of India, that it is inappropriate to do so 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 23 for the benefit of that person or any other person;
- (b) whether any benefit accrues or may accrue to a person who is neither a New Zealand resident nor an Indian resident;
- (c) the prevention of fraud or the avoidance of the taxes to which the Convention 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.

ARTICLE 2

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

SCHEDULE—*continued*

NEW SECOND SCHEDULE TO PRINCIPAL ORDER—*continued*

“SECOND SCHEDULE—*continued*”

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

ARTICLE 3

Article 1 of this Protocol shall apply to income derived on or after the 1st day of the month following the date on which this Protocol enters into force.

DONE at NEW DELHI in duplicate on this Twenty Ninth day of August, One Thousand Nine Hundred Ninety Six in the Hindi and the English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

N.W. BRIDGE
FOR THE GOVERNMENT OF
NEW ZEALAND

G. K. MISHRA
FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA”

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 Protocol to the 1986 New Zealand-India Double Tax Convention. The aim of the Protocol is to prevent tax avoidance through the use of tax sparing. The Protocol applies to income derived on or after the first day of the month following the date on which it comes into force in accordance with Article 2 of the Protocol.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 December 1996.
This order is administered in the Inland Revenue Department.