



**THE DOUBLE TAXATION RELIEF (FEDERAL REPUBLIC OF GERMANY) ORDER 1980**

KEITH HOLYOAKE, Governor-General

**ORDER IN COUNCIL**

At the Government House at Wellington this 26th day of May 1980

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.

**O R D E R**

**1. Title**—This order may be cited as the Double Taxation Relief (Federal Republic of Germany) Order 1980.

**2. Double taxation agreement**—It is hereby declared that the arrangements specified in the agreement set out in the Schedule to this order, being arrangements that have been made with the Government of the Federal Republic of Germany 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, corporation tax, capital tax and trade tax imposed by the laws of the Federal Republic of Germany, 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 agreement.

**SCHEDULE**

**AGREEMENT BETWEEN NEW ZEALAND AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CERTAIN OTHER TAXES**

New Zealand and the Federal Republic of Germany,

Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Certain Other Taxes,

Have agreed as follows:

## ARTICLE 1

*Personal Scope*

This Agreement 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 Agreement shall apply are:

- (a) in the Federal Republic of Germany:
  - the Einkommensteuer (income tax), the Körperschaftsteuer (corporation tax), the Vermögensteuer (capital tax), and the Gewerbesteuer (trade tax) (hereinafter referred to as "German tax");
- (b) in New Zealand:
  - the income tax and the excess retention tax (hereinafter referred to as "New Zealand tax").

2. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement 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 Agreement, unless the context otherwise requires:

- (a) 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 seabed and sub-soil;
- (b) the term "Federal Republic of Germany", when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, and any area beyond the territorial waters of the Federal Republic of Germany, within which, under German law and in accordance with international law, the rights of the Federal Republic of Germany with respect to the seabed and sub-soil and their natural resources may be exercised;
- (c) the term "person" means an individual, a company and any other entity subject to tax;

- (d) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) 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;
- (f) the term “national” means:
  - (i) in respect of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership and association deriving its status as such from the law in force in New Zealand
  - (ii) in respect of the Federal Republic of Germany any German within the meaning of Article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany;
- (g) 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;
- (h) 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 the Federal Republic of Germany the Federal Minister of Finance or his authorised representative.

2. As regards the application of the Agreement by a Contracting 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 Agreement applies.

#### ARTICLE 4

##### *Resident*

1. For the purposes of this Agreement, 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. 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 or capital situated therein.

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 paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question having regard to the place of effective management, the place where the person is incorporated or otherwise constituted and any other relevant factors.

#### ARTICLE 5

##### *Permanent Establishment*

1. For the purposes of this Agreement, 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. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 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.

6. 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.

7. 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 a 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. The term “real property” shall have the meaning which it has under the law of the Contracting 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, 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. 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 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 Agreement, 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 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 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. The term "dividends" as used in this Article means income from shares, and other income assimilated to income from shares by the laws of the State of which the company making the distribution is a resident, and income derived by a "Stiller Gesellschafter" (sleeping partner) from his participation as such and distributions on certificates of an investment-trust.

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 per cent 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. Notwithstanding the provisions of paragraph 2,

(a) interest arising in the Federal Republic of Germany and paid to the New Zealand Government shall be exempt from German tax;

(b) interest arising in New Zealand and paid to the German Government, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) shall be exempt from New Zealand tax.

4. 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 attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. However, the term "interest" does not include income dealt with in Article 10.

5. The provisions of paragraphs 1 to 3 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.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a "Land", a political subdivision, 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.



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

## 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 amount of tax so charged shall not exceed 10 per cent 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 "Land", a political subdivision, 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 Contracting 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 Agreement.

#### ARTICLE 13

##### *Income from the Alienation of Property*

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

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

4. Income or gains from the alienation of any property, other than that referred to in paragraphs 1 to 3, 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 and 19, 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, 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 of a company 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. Periodic or non-periodic social security pensions and other similar allowances received from a Contracting State, a "Land", a political sub-division, a local authority or a governmental instrumentality thereof, shall be taxable only in that State.

3. Periodic or non-periodic payments received from the Federal Republic of Germany, or a "Land" or a governmental instrumentality thereof as compensation for an injury or damage sustained as a result of hostilities or past political persecution shall be taxable only in the Federal Republic of Germany.

#### ARTICLE 19

##### *Government Service*

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

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that other Contracting 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 Contracting State, a "Land", a political subdivision or a local authority thereof to any individual in respect of services rendered to that State, a "Land" or political subdivision or local authority thereof shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting 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 any business carried on by a Contracting State, a "Land", a political subdivision or a local authority thereof.

#### ARTICLE 20

##### *Professors, Teachers and Students*

1. Remuneration which a professor or teacher who is a resident of a Contracting State and who visits the other Contracting State for a period not exceeding two years for the purpose of carrying out advanced study or research or of teaching at a university, college, school or other educational institution receives for those activities shall not be taxed in that other State.

2. Paragraph 1 of this Article shall apply to income from research only if such research is undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

3. Payments which a student or business apprentice 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*

1. Items of income of a resident of a Contracting State which are not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State. However, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

2. The provisions of paragraph 1 shall not apply if the recipient of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 22

*Capital*

1. Capital represented by real property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by 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 by 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, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by 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.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 23

*Relief from Double Taxation*

1. 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, German tax paid under the law of the Federal Republic of Germany and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in the Federal Republic of Germany (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.

2. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

- (a) Unless the provisions of sub-paragraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income arising in New Zealand and any item of capital situated within New Zealand which, according to this Agreement, may be taxed in New Zealand. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded.

In the case of income from shares the foregoing provisions shall apply only to such income as is paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of New Zealand at least 25 per cent of the capital of which is owned directly by the German company. For the purposes of taxes on capital there shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which are excluded or, if paid, would be excluded, according to the immediately foregoing sentence, from the basis upon which German tax is imposed.

- (b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income and corporation tax payable in respect of the following items of income arising in New Zealand the New Zealand tax paid under the laws of New Zealand and in accordance with this Agreement on:

- (aa) dividends within the meaning of Article 10, paragraph 3 and not dealt with in sub-paragraph (a);  
 (bb) interest within the meaning of Article 11, paragraph 4;  
 (cc) royalties within the meaning of Article 12, paragraph 3;  
 (dd) income to which Articles 16 and 17 apply;  
 (ee) income taxable in New Zealand in accordance with Article 21, paragraph 1.

In such a case New Zealand tax payable under the laws of New Zealand and in accordance with this Agreement on the above-mentioned items of income shall, subject to the provisions of German tax law regarding credit for foreign tax, be allowed as a credit against German income or corporation tax payable on such items of income.

3. For the purposes of this Article profits, income or gains of a resident of one Contracting State shall be regarded as arising from sources in the other Contracting State if they have been subjected to taxation in that other State in accordance with this Agreement.

#### ARTICLE 24

##### *Mutual Agreement Procedure*

1. Where a person 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 Agreement, 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.

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 Agreement.

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 Agreement.

4. The competent authorities of the Contracting 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 Contracting States.

#### 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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. 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 Agreement. 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 Privileges*

1. Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organisation under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding Article 4 of this Agreement, an individual who is a member of a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Agreement to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total world income as are residents of the sending State.

3. This Agreement shall not apply to International Organisations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

#### ARTICLE 27

##### *Territorial Extension*

1. This Agreement may be extended, either in its entirety or with modifications to any territory for whose international relations New Zealand is responsible, and which imposes taxes substantially similar in character to those to which this Agreement 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 Agreement by one of them under Article 30 shall also terminate, in the manner provided for in that Article, the application of this Agreement to any territory to which it has been extended under this Article.

#### ARTICLE 28

##### *Land Berlin*

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of New Zealand within three months of the date of entry into force of this Agreement.

#### ARTICLE 29

##### *Entry into Force*

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible.

2. This Agreement shall enter into force one month after the date of exchange of the instruments of ratification and shall have effect:

- (a) in New Zealand: in respect of income assessable for any income year beginning on or after 1 April 1978;
- (b) in the Federal Republic of Germany;
  - (i) in respect of German tax withheld at the source, for the tax on amounts paid on or after 1 January 1978;
  - (ii) in respect of other German taxes, for taxes which are levied for the calendar year 1978 and for subsequent years.



## ARTICLE 30

*Termination*

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination, and, in such event, this Agreement shall cease to be effective:

(a) in New Zealand:

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

(b) in the Federal Republic of Germany:

(i) in respect of German tax withheld at the source, for the tax on amounts paid on or after 1 January in the calendar year next following that in which the notice is given;

(ii) in respect of other German taxes, for taxes which are levied for the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate, at Wellington, this 20th day of October 1978, in the English and German languages, each version being equally authentic.

For  
New Zealand  
BRIAN TALBOYS

For the Federal Republic  
of  
Germany  
LAMBSDORFF  
DOERING

## PROTOCOL

NEW ZEALAND AND THE FEDERAL REPUBLIC OF GERMANY have agreed at the signing of the Agreement between the two States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Certain Other Taxes upon the following provisions which shall form an integral part of the said Agreement.

1. With reference to Article 2,

- (a) for the purposes of sub-paragraph (b) of paragraph 1 of Article 2, the New Zealand income tax does not include the bonus issue tax.
- (b) The provisions of this Agreement in respect of taxation of income or capital shall likewise apply to the German trade tax computed on a basis other than income or capital.
- (c) The terms "German tax" and "New Zealand tax" do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which the Agreement applies.

2. With reference to Article 5,

- (a) an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State.
- (b) It is understood that the term permanent establishment includes the use or the installation of substantial equipment or machinery by an enterprise for the purpose of the extraction of natural resources, a building site, a construction or an installation project which exists for more than twelve months.

3. With reference to Article 7,

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 determined on the basis of the total amount of the contract, but are 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 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.

4. With reference to Articles 10, 11 and 12,

- (a) for the purposes of Articles 10, 11 or 12, 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.
- (b) Notwithstanding the provisions of Articles 10 and 11, income may be taxed in the Contracting State in which it arises, and according to the law of that State, provided that such income
  - (aa) is derived from rights or debt-claims carrying the right to participate in profits (including income derived by a sleeping partner from his participation as such, from a "partiarisches Darlehen" and from "Gewinnobligationen" within the meaning of the tax law of the Federal Republic of Germany) and
  - (bb) is deductible in the determination of profits of the debtor of such income.
- (c) It is understood that, with reference to paragraph 5 of Article 10, the expression "tax on the company's undistributed profits" shall not include the bonus issue tax referred to in sub-paragraph (a) of number 1 of this Protocol.
- (d) 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 that such payments are dependent upon production. 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 blue prints 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.

5. With reference to Article 13,

- (a) income or gains from the alienation of shares of a company which is a resident of a Contracting State, the property of which consists principally of real property situated in that Contracting State, may be taxed in that State. In the case of a resident of the Federal Republic of Germany, sub-paragraph (b) of paragraph 2 of Article 23 shall apply to such income.
- (b) in the case of an individual who has been a resident of a Contracting State and who has become a resident of the other Contracting State, that other Contracting State shall calculate the gain from the alienation of shares or other rights in a company on the basis of the value of such shares or rights on the date on which the individual has ceased to be a resident of the first-mentioned State provided that the gain accrued up to this date has been taxed in that first-mentioned State.

6. With reference to Article 23,

the provisions of paragraph 2 do not prevent the Federal Republic of Germany from levying the compensatory imposition of the corpora-

tion tax (Ausschüttungsbelastung) if a company which is a resident of the Federal Republic of Germany distributes income derived from sources within New Zealand.

7. With reference to Articles 6 to 23,

it is understood that nothing in the Agreement shall

(a) affect the operation of any law of a Contracting State relating to the computation of taxable profits from insurance,

(b) prevent a Contracting State from imposing its tax on items of income received from or through, and on items of capital owned through, an estate or trust which is a resident of the other Contracting State and which are included in the income or capital of a resident of the first-mentioned State in accordance with the laws of that State,

(c) prevent a Contracting State from applying its laws with respect to tax avoidance regarding income accrued or received in a third State even where such income or assets or activities underlying it are channelled through or held by a person resident in the other Contracting State.

If the relevant law in force in either State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this number that may be appropriate.

DONE in duplicate, at Wellington, this 20th day of October 1978, in the English and German languages, each version being equally authentic.

For  
New Zealand  
BRIAN TALBOYS

For the Federal Republic  
of  
Germany  
LAMBSDORFF  
DOERING

P. G. MILLEN,  
Clerk of the Executive Council.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 29 May 1980.

This order is administered in the Inland Revenue Department.