

**CONVENTION BETWEEN**

**CANADA**

**AND**

**NEW ZEALAND**

**FOR THE AVOIDANCE OF DOUBLE TAXATION**

**AND THE PREVENTION OF FISCAL EVASION**

**WITH RESPECT TO TAXES ON INCOME**

**CANADA AND NEW ZEALAND,**

**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:

## **I. SCOPE OF THE CONVENTION**

### **ARTICLE 1**

#### **Persons Covered**

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

## **ARTICLE 2**

### **Taxes Covered**

1. The taxes to which the Convention shall apply are:
  - (a) In the case of Canada, the taxes imposed by the Government of Canada under the *Income Tax Act* (hereinafter referred to as “Canadian tax”);
  - (b) In the case of New Zealand, the income tax (hereinafter referred to as “New Zealand tax”).
  
2. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the taxes listed in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

## II. DEFINITIONS

### ARTICLE 3

#### General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
  - (a) the term “New Zealand” means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
  - (b) the term “Canada”, used in a geographical sense, means:
    - (i) the land territory, internal waters and territorial sea, including the air space above these areas, of Canada,
    - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982 (UNCLOS), and
    - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;
  - (c) the term “person” includes an individual, a trust, a company, a partnership and any other body of persons;

- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term “enterprise” applies to the carrying on of any business;
- (f) 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;
- (g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is principally between places in the other Contracting State;
- (h) the term “competent authority” means:
  - (i) in the case of Canada, the Minister of National Revenue or the Minister’s authorised representative,
  - (ii) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;
- (i) the term “national”, in relation to a Contracting State, means:
  - (i) any individual possessing the nationality or citizenship of that Contracting State, and
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (j) the term “business” includes the performance of professional services and of other activities of an independent character;

(k) the terms “a Contracting State” and “the other Contracting State” mean New Zealand or Canada as the context requires.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## **ARTICLE 4**

### **Resident**

1. For the purposes of this Convention, the terms “resident of Canada” and “resident of New Zealand” mean respectively any person who is resident in Canada for the purposes of Canadian tax and any person who is resident in New Zealand for the purposes of New Zealand tax.
2. A resident of a Contracting State also includes that State and any political subdivision or local authority thereof.
3. A person is not a resident of a Contracting State for the purposes of this Convention if the person is liable to tax in that State in respect only of income from sources in that State.
4. Where by reason of the provisions of paragraphs 1 and 2 an individual is a resident of both Contracting States, then their status shall be determined as follows:
  - (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which the individual has their centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;



- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
- (d) if the individual 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.

5. Where, by reason of the provisions 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 its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to claim any relief or exemption from tax provided by the Convention.

## 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 relating to the exploration for or the exploitation of natural resources.
3. A building site, or a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, constitutes a permanent establishment if it lasts more than 12 months.
4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if, for more than 183 days in any 12-month period:

- (a) it carries on activities which consist of, or which are connected with, the exploration for or exploitation of natural resources, including standing timber, situated in that State; or
- (b) it operates substantial equipment in that State.

5. Notwithstanding the provisions of paragraphs 1, 2, and 3, where an enterprise of a Contracting State performs services in the other Contracting State:

- (a) through an individual who is present in that other State for a period or periods exceeding in the aggregate 183 days in any 12-month period, and more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual; or
- (b) for a period or periods exceeding in the aggregate 183 days in any 12-month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other State,

the activities carried on in that other State in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless these services are limited to those mentioned in paragraph 7 which, if performed through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph. For the purposes of this paragraph, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual.

6. For the purposes of determining the duration of activities under paragraphs 3 and 4, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

7. 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 subparagraphs (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.

8. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 9 applies – is acting on behalf of an enterprise and:

- (a) has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise; or
- (b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to 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 7 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.

9. 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.

10. 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.

### **III. TAXATION OF INCOME**

#### **ARTICLE 6**

##### **Income from Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture, forestry or fishing) situated in the other Contracting State may be taxed in that other State.
  
2. The term “immovable property” shall have the meaning which it has for the purposes of the relevant tax law of the Contracting State in which the property in question is situated. The term shall in any case include any natural resources, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property, rights to explore for or exploit natural resources or standing timber, and rights to variable or fixed payments as consideration for the exploitation of, or the right to explore for or exploit natural resources or standing timber; ships and aircraft shall not be regarded as immovable property.
  
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

## **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. 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.
5. 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.

6. Where:

- (a) a resident of Canada beneficially owns (whether as a direct beneficiary of a trust or through one or more interposed trusts) a share of the profits of a business of an enterprise carried on in New Zealand by the trustee of a trust other than a trust which is treated as a company for tax purposes; and
- (b) in relation to that enterprise, that trustee has or would have, if it were a resident of Canada, a permanent establishment in New Zealand,

then the business of the enterprise carried on by the trustee through such permanent establishment shall be deemed to be a business carried on in New Zealand by that resident through a permanent establishment situated in New Zealand and the resident's share of profits that is attributable to that permanent establishment may be taxed in New Zealand.

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.

8. Notwithstanding the provisions of this Article, an enterprise of a Contracting State that derives income from any form of insurance, other than life insurance, from the other State in the form of premiums paid for the insurance of risks situated in that other State, may to that extent be taxed in the other State in accordance with the law of that other State relating specifically to the taxation of any person who derives such income. However, the amount of the income so derived that may be taxed in that other State in accordance with this paragraph shall not exceed 10 per cent of the gross premiums receivable, except where the income so derived is attributable to a permanent establishment of an enterprise of the first-mentioned State, in which case the other provisions of this Article shall apply.



## **ARTICLE 8**

### **Ship and Aircraft Operations**

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
  
2. Notwithstanding the provisions of paragraph 1 and Article 7, profits of an enterprise of a Contracting State derived from the carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in the other Contracting State and are discharged at a place in that other State, may be taxed in that other State.
  
3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## ARTICLE 9

### Associated Enterprises

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its domestic laws and, in any case, after eight years from the end of the taxable year in which the income which would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that enterprise.

4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud or wilful default.

## **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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
  - (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company that holds directly at least 10 per cent of the voting power in the company paying the dividends; and
  - (b) 15 per cent of the gross amount of the dividends, in all other cases.

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

3. Notwithstanding the provisions of paragraph 2, dividends arising in a Contracting State and paid to the other Contracting State or a political subdivision or local authority thereof or to any wholly-owned agency or instrumentality of that State, political subdivision or local authority that performs functions of a governmental nature, shall be taxable only in that other State. However, this provision shall only apply in circumstances as may be agreed from time to time between the competent authorities of the Contracting States.
  
4. The term “dividends” as used in this Article means income from shares and other income subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. 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 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.

7. Nothing in this Convention shall be construed as preventing Canada from imposing a tax on the earnings attributable to permanent establishments in Canada of a company which is a resident of New Zealand, in addition to the tax which would be chargeable on the earnings of a company which is a resident of Canada, provided that the rate of any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this paragraph, the term "earnings" means profits attributable to such permanent establishments in Canada (including gains from the alienation of property forming part of the business property, referred to in paragraph 2 of Article 13, of such permanent establishments) in accordance with Article 7 in a year and previous years after deducting therefrom:

- (a) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years;

- (b) all taxes chargeable in Canada on such profits, other than the additional tax referred to herein;
- (c) the profits reinvested in Canada, provided that the amount of such deduction shall be determined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle hereof; and
- (d) five hundred thousand Canadian dollars (\$500,000), less any amount deducted:
  - (i) by the company, or
  - (ii) by a person related thereto from the same or a similar business as that carried on by the company,

under this subparagraph (d); for the purposes of this subparagraph (d), a company is related to another company if one company directly or indirectly controls the other, or both companies are directly or indirectly controlled by the same person or persons, or if the two companies deal with each other not at arm's length.

8. The provisions of paragraph 7 shall also apply with respect to earnings derived from the alienation of immovable property in Canada by a company carrying on a trade in immovable property, whether or not it has a permanent establishment in Canada, but only insofar as these earnings may be taxed in Canada under the provisions of paragraph 1 of Article 13.

9. No relief shall be available under this Article if it is the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or

with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2:
  - (a) interest arising in New Zealand and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by Export Development Canada;
  - (b) interest arising in Canada and paid to a resident of New Zealand shall be taxable only in New Zealand if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by any body in New Zealand of a similar nature to Export Development Canada as may be agreed upon between the competent authorities of the Contracting States.
4. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the first-mentioned State if the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term “financial institution” means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial



markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.

5. Notwithstanding paragraph 4, interest referred to in that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if:

- (a) in the case of interest arising in New Zealand, it is paid by a person that has not paid approved issuer levy in respect of the interest. This subparagraph (a) shall not apply if New Zealand does not have an approved issuer levy, or the payer of the interest is not eligible to elect to pay the approved issuer levy, or if the rate of the approved issuer levy payable in respect of such interest exceeds 2 per cent of the gross amount of the interest. For the purposes of this Article, “approved issuer levy” includes any identical or substantially similar charge payable by the payer of interest arising in New Zealand enacted after the date of this Convention in place of approved issuer levy;
- (b) it is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans; or
- (c) all or any portion of the interest is paid or payable on an obligation that is contingent or dependent on the use of or production from property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation.

6. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and

prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term “interest” does not include income dealt with in Article 10.

7. The provisions of paragraphs 1, 2, 3, 4 and 5 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

8. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is deductible in determining the profits attributable to that permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

9. 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.

10. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the interest, the creation or assignment of the debt-claim or other rights in respect of which the interest

is paid, or the establishment, acquisition or maintenance of the person which is the beneficial owner of the interest or the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

## 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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
  - (a) 5 per cent of the gross amount of the royalties if they are:
    - (i) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (excluding royalties in respect of motion picture films and royalties in respect of works on film, videotape or other means of reproduction for use in connection with television broadcasting), or
    - (ii) royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement);
  - (b) 10 per cent of the gross amount of the royalties in all other cases.
  
3. The term “royalties” as used in this Article means payments of any kind received as consideration for:

- (a) the use of, or the right to use, any copyright, patent, trade mark, design or model, plan, secret formula, or process or other intangible property;
- (b) the use of, or the right to use, industrial, commercial or scientific equipment;
- (c) information concerning industrial, commercial or scientific experience;
- (d) the use of, or the right to use:
  - (i) motion picture films,
  - (ii) films, videotapes or other means of reproduction for use in connection with television, or
  - (iii) tapes for use in connection with radio broadcasting;
- (e) any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
- (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a person who is a resident of that State. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and the royalties are deductible in determining the profits attributable to that permanent establishment, then the royalties shall be deemed to arise in the State in which the permanent establishment 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.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the royalties, or with the creation or assignment of the rights in respect of which the royalties are paid or credited, to take advantage of this Article by means of that creation or assignment. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

## **ARTICLE 13**

### **Alienation of Property**

1. Income or gains derived by a resident of a Contracting State from the alienation of immovable 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 movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Income or gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Income or gains derived by a resident of a Contracting State from the alienation of:
  - (a) shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State; or
  - (b) an interest in a partnership, trust or other entity, deriving more than 50 per cent of its value directly or indirectly from immovable property situated in the other Contracting State,may be taxed in that other State.

5. Nothing in this Convention affects the application of the laws of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

6. Where an individual who ceases to be a resident of a Contracting State, and immediately thereafter becomes a resident of the other Contracting State, is treated for the purposes of taxation in the first-mentioned State as having alienated a property (in this paragraph referred to as the “deemed alienation”) and is taxed in that State by reason thereof, the individual may elect to be treated for purposes of taxation in the other State as if the individual had, immediately before becoming a resident of that State, sold and repurchased the property for an amount equal to the lesser of its fair market value at the time of the deemed alienation and the amount the individual elects, at the time of the actual alienation of the property, to be the proceeds of disposition in the first-mentioned State in respect of the deemed alienation. However, this provision shall not apply to property any gain from which, arising immediately before the individual became a resident of that other State, may be taxed in that other State or to immovable property situated in a third State.



## **ARTICLE 14**

### **Income from Employment**

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other 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 any 12 month period commencing or ending in the taxation 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 deductible in determining the profits attributable to a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a Contracting State in international traffic shall be taxable only in the first-mentioned State.

## **ARTICLE 15**

### **Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's 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 16**

### **Entertainers and Sportspersons**

1. Notwithstanding the provisions of Articles 7 and 14, 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 a sportsperson, from that person's 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 a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
  
3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the sportsperson nor persons related to them participate directly or indirectly in the profits of the person referred to in that paragraph.
  
4. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by a resident of the other Contracting State in the context of a visit in the first-mentioned State of a non-profit organization of the other State, if the visit is wholly or mainly supported by public funds.

## ARTICLE 17

### Pensions

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the laws of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed the lesser of:
  - (a) 15 per cent of the gross amount of the payment; and
  - (b) the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by the individual in the year, if the individual were resident in the Contracting State in which the payment arises.
3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the portion thereof that is subject to tax in that State. However, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity.
4. Notwithstanding anything in this Convention:
  - (a) war pensions and allowances (including pensions and allowances paid to war veterans or paid as a consequence of damages or injuries suffered as a consequence of a war) arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from

tax in that other State to the extent that they would be exempt from tax if received by a resident of the first-mentioned State; and

- (b) alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof shall be taxable only in that other State, but the amount taxable in that other State shall not exceed the amount that would be taxable in the first-mentioned State if the recipient were a resident thereof.

5. For the purposes of this Article, the term “pension” includes any payment made under a sickness, accident or disability plan, as well as any payment made under the social security legislation in a Contracting State.

6. For the purposes of this Article, the term “annuity” means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth (other than services rendered), but does not include a payment that is not a periodic payment or any annuity the cost of which was deductible in whole or in part for the purposes of taxation in the Contracting State in which it was acquired.

## **ARTICLE 18**

### **Government Service**

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision thereof to an individual in respect of services rendered to that State or subdivision shall be taxable only in that State.
- (b) However, such salaries, wages and other similar 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 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. The provisions of Articles 14, 15 or 16 shall apply to payments in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision thereof.

## **ARTICLE 19**

### **Students**

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 that individual's education or training receives for the purpose of that individual's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

## **ARTICLE 20**

### **Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State. Where such income is income from a trust resident in Canada, other than a trust to which contributions were deductible, the tax so charged shall not exceed 15 per cent of the gross amount of the income if the beneficial owner is a resident of New Zealand, provided that the income is taxable in New Zealand.



## **IV. ELIMINATION OF DOUBLE TAXATION**

### **ARTICLE 21**

#### **Elimination of Double Taxation**

1. In the case of Canada, double taxation shall be avoided as follows:
  - (a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions - which shall not affect the general principle hereof - and unless a greater deduction or relief is provided under the laws of Canada, tax payable in New Zealand on profits, income or gains arising in New Zealand shall be deducted from any Canadian tax payable in respect of such profits, income or gains;
  - (b) where, in accordance with any provision of the Convention, income derived by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income take into account the exempted income.
2. Subject to the provisions of the laws of New Zealand 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 of this Article), Canadian tax paid under the laws of Canada and consistent with this Convention, in respect of income derived by a resident of New Zealand from sources in Canada (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.

3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

## **V. SPECIAL PROVISIONS**

### **ARTICLE 22**

#### **Non-Discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on a permanent establishment which an enterprise of a third State has in that other State carrying on the same activities in similar circumstances.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises which are residents of the first-mentioned State in similar circumstances, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

5. In this Article, the term “taxation” means taxes which are the subject of this Convention.

## **ARTICLE 23**

### **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which that person is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the application must be submitted 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 referred to in paragraph 1 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 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. A Contracting State shall not, after the expiry of the time limits provided in its domestic laws and, in any case, after eight years from the end of the taxable period to which the income concerned was attributed, change the income of a resident of either of the Contracting States by including therein items of income which have also been included in income in the other Contracting State. This paragraph shall not apply in the case of fraud or wilful default.
4. 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.

5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention and may communicate with each other directly for the purpose of applying the Convention.

## **ARTICLE 24**

### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement in respect of, the determination of appeals in relation to taxes, or the oversight of the above. 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.

3. In no case shall the provisions of paragraphs 1 and 2 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*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because the information relates to ownership interests in a person.

6. Authorized representatives of a Contracting State shall be permitted to enter the other Contracting State to interview individuals or examine a person's books and records, with their consent, in accordance with procedures mutually agreed upon by the competent authorities.



## **ARTICLE 25**

### **Assistance in the Collection of Taxes**

1. The Contracting States undertake to lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, including agreement to ensure comparable levels of assistance.
2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description collected, by or on behalf of the Contracting States, or of their political subdivisions, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection related to such amount. This Article only applies to revenue claims that are in respect of a tax year that commences after a date that is five years before the date on which this Convention enters into force.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim may, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. Where an application for collection of a revenue claim is accepted, that revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. Notwithstanding the provisions of paragraph 3, a revenue claim accepted by a Contracting State for purposes of paragraph 3 shall not, in that State, be accorded any priority applicable to a revenue claim under the laws of that State by reason of its

nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State. A revenue claim of a Contracting State shall not be enforced by imprisonment of the debtor in the other Contracting State.

5. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

6. Where, at any time after a request has been made by a Contracting State under paragraph 3 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

7. Unless the competent authorities otherwise agree, ordinary costs incurred in providing collection assistance in respect of a revenue claim of a Contracting State shall be borne by the other Contracting State and any agreed extraordinary costs incurred shall be borne by the first-mentioned State.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

## **ARTICLE 26**

### **Members of Diplomatic Missions and Consular Posts**

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.
  
2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident only of the sending State if that individual is liable in the sending State to the same obligations in relation to tax on total income as are residents of that sending State.
  
3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State or group of States, 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 income as are residents thereof.

## ARTICLE 27

### Miscellaneous Rules

1. The provisions of this Convention shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded by the laws of a Contracting State in the determination of the tax imposed by that State.
2. Nothing in this Convention shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that State with respect to a partnership, trust, company, or other entity in which that resident has an interest.
3. For the purposes of paragraph 3 of Article XXII (Consultation) of the *General Agreement on Trade in Services* of the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of Article 23 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

## **VI. FINAL PROVISIONS**

### **ARTICLE 28**

#### **Entry Into Force**

1. Each of the Contracting States shall notify the other Contracting State, through diplomatic channels, of the completion of the necessary domestic procedures for this Convention to enter into force in New Zealand and in Canada. This Convention shall enter into force on the date of the later of these notifications and its provisions shall have effect:

(a) in New Zealand:

- (i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month following the date on which this Convention enters into force,
- (ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April following the date on which this Convention enters into force.

(b) in Canada:

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of the second month following the date on which this Convention enters into force, and

- (ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January in the calendar year following that in which this Convention enters into force.

2. The *Convention between the Government of Canada and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, done at Wellington on 13 May 1980 (referred to herein as the “1980 Convention”) shall cease to have effect from the dates on which this Convention becomes effective in accordance with paragraph 1.

3. The 1980 Convention shall terminate on the last date on which it has effect in accordance with paragraph 2.

## ARTICLE 29

### Termination

1. This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 of any calendar year after the year of the entry into force, give to the other Contracting State a notice of termination in writing through the diplomatic channels. In such event, the Convention shall cease to have effect:

(a) in New Zealand:

- (i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month following that in which the notice of termination is given,
- (ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April in the calendar year following that in which the notice of termination is given.

(b) in Canada:

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of the second month following that in which the notice of termination is given, and
- (ii) in respect of other Canadian tax, for taxation years beginning after the end of that calendar year.

2. This Convention shall terminate on the last date on which it has effect in accordance with paragraph 1, unless the Contracting States agree otherwise.



**IN WITNESS WHEREOF** the undersigned, duly authorised by their respective Governments, have signed this Convention.

**DONE** in duplicate at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 2012, in the English and French languages, both texts being equally authentic.

---

**FOR CANADA**

---

**FOR NEW ZEALAND**

## **PROTOCOL**

At the time of signing of the *Convention between Canada and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (the “Convention”), the undersigned have agreed upon the following provisions which shall form an integral part of the Convention:

### **ARTICLE I**

With reference to Article 2 of the Convention:

It is understood that the taxes covered by the Convention do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

### **ARTICLE II**

With reference to Article 4 of the Convention:

It is understood that a resident of a Contracting State includes any agency or instrumentality of any government of:

- (a) such State;
- (b) a political subdivision of such State; or
- (c) a local authority of such State.

### **ARTICLE III**

With reference to Article 6 of the Convention:

It is understood that any right referred to in paragraph 2 shall be regarded as situated where the property to which it relates is situated or where the exploration or exploitation may take place.

### **ARTICLE IV**

With reference to Articles 7 and 13 of the Convention:

It is understood that, notwithstanding paragraph 7 of Article 7, where items of income are dealt with in both Article 7 and paragraph 2 of Article 13 of this Convention, then the provisions of Article 7 shall apply.

### **ARTICLE V**

With reference to Article 8 of the Convention:

The interpretation of the term “profits” in paragraph 2 of Article 8 should be guided by the first sentence of paragraph 5 of the Commentary on Article 8 of the Organisation for Economic Co-Operation and Development Model Tax Convention on Income and on Capital (July 2008).

### **ARTICLE VI**

With reference to Articles 10, 11 and 12 of the Convention:

It is understood that in determining, for the purposes of those Articles, whether dividends, interest or royalties are beneficially owned by a resident of New Zealand:

- (a) dividends, interest or royalties in respect of which a trustee is subject to tax in New Zealand;
- (b) dividends in respect of which a trustee would be subject to tax in New Zealand but for an exemption that applies in relation to those dividends as agreed by the competent authorities of the Contracting States,

shall be treated as being beneficially owned by that trustee.

## **ARTICLE VII**

With reference to Article 12 of the Convention:

- (a) It is understood that the term “royalties” does not include income dealt with in Article 8;
- (b) It is understood that the interpretation of subparagraph 3(e) should be guided by paragraph 11.6 of the Commentary on Article 12 of the Organisation for Economic Co-Operation and Development Model Tax Convention on Income and on Capital (July 2008).

## **ARTICLE VIII**

With reference to Article 28 of the Convention:

It is understood that, notwithstanding the provisions of that Article, the provisions of Articles 23 and 24 shall have effect from the date of entry into force of the Convention, without regard to the taxable period to which the matter relates.

**IN WITNESS WHEREOF** the undersigned, duly authorised by their respective Governments, have signed this Protocol.