

Income Tax (Singapore — New Zealand) (Avoidance of Double Taxation Agreement) Order 2010

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Enacting Formula

THE SCHEDULE

No. S 452

**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX (SINGAPORE — NEW ZEALAND) (AVOIDANCE OF DOUBLE
TAXATION AGREEMENT) ORDER 2010**

WHEREAS it is provided by section 49 of the Income Tax Act that if the Minister by order declares that arrangements specified in the order have been made with the Government of any country outside Singapore with a view to affording relief from double taxation in relation to tax under the Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under the Act notwithstanding anything in any written law:

AND WHEREAS it is provided by section 105C of the Income Tax Act that the Minister may by order declare an avoidance of double taxation arrangement as a prescribed arrangement for the purposes of Part XXA of the Act:

AND WHEREAS by an Agreement dated 21st August 2009, between the Government of the Republic of Singapore and the Government of New Zealand, arrangements were made, amongst other things, for the avoidance of double taxation:

NOW, THEREFORE, it is hereby declared by the Minister for Finance —

- (a) that the arrangements specified in the Schedule to this Order have been made with the Government of New Zealand;

- (b) that the arrangements are a prescribed arrangement for the purposes of Part XXA of the Act; and
- (c) that it is expedient that those arrangements should have effect notwithstanding anything in any written law.

THE SCHEDULE

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

AND

THE GOVERNMENT OF NEW ZEALAND

FOR

THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Singapore and the Government of New Zealand,
Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

ARTICLE 1 — PERSONS COVERED

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 the Agreement shall apply are:

- (a) In New Zealand: the income tax
(hereinafter referred to as “New Zealand tax”);
- (b) In Singapore: the income tax

(hereinafter referred to as “Singapore tax”).

2. The Agreement shall apply also to any identical or substantially similar taxes that 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 within a reasonable period of time of any significant changes that have been made in their taxation laws.

ARTICLE 3 — GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “person” includes an individual, a company and any other body of persons;
- (b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (c) the term “enterprise” applies to the carrying on of any business;
- (d) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (e) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (f) the term “competent authority” means:
 - (i) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;
 - (ii) in the case of Singapore, the Minister for Finance or an authorised representative;
- (g) 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;
- (h) the term “business” includes the performance of professional services and of other activities of an independent character;
- (i) the terms “a Contracting State” and “the other Contracting State” mean New Zealand or Singapore as the context requires;
- (j) the term “statutory body” means a body constituted by statute and performing only non-commercial functions which would otherwise be performed by the Government of a Contracting State;
- (k) the term “recognised Stock Exchange” means:

- (i) in the case of New Zealand, the securities markets operated by the New Zealand Exchange Limited;
 - (ii) in the case of Singapore, the securities market operated by the Singapore Exchange Limited, Singapore Exchange Securities Trading Limited and the Central Depository (Pte) Limited; and
 - (iii) any other stock exchange located in a Contracting State that is agreed upon by the competent authorities of the Contracting States;
- (l) (i) the term “New Zealand” means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; 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;
- (ii) the term “Singapore” means the Republic of Singapore and when used in a geographical sense, the term “Singapore” includes the territorial waters of Singapore and any area extending beyond the limits of the territorial waters of Singapore, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Singapore and in accordance with international law as an area over which Singapore has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living.

2. For the purposes of Articles 10, 11 and 12, a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of that interest or those dividends or royalties.

3. As regards the application of the Agreement 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 Agreement 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 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 that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision, local authority or statutory body thereof.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual’s 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’s 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) in any other case, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

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 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:

- (a) (i) it carries on activities which consist of, or which are connected with, the exploration or exploitation of natural resources, including standing timber, situated in that State; or
- (ii) the enterprise operates substantial equipment in that State; but only where the activities continue or the substantial equipment is operated within the State for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the year of income concerned; or
- (b) it furnishes services (including consultancy and independent personal services), but only where activities of that nature continue within the State for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the year of income concerned.

5. 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