

No. 33239

**NEW ZEALAND
and
AUSTRALIA**

**Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.
Signed at Melbourne on 27 January 1995**

Authentic text: English.

Registered by New Zealand on 11 October 1996.

**NOUVELLE-ZÉLANDE
et
AUSTRALIE**

Accord tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu. Signé à Melbourne le 27 janvier 1995

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 11 octobre 1996.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF AUSTRALIA

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
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 New Zealand:

the income tax and the fringe benefit tax;

(b) In Australia:

the income tax, the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources and the fringe benefits tax imposed under the federal law of Australia.

2. This Agreement shall apply also to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of New Zealand after the date of signature of this 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 which have been made in the law of their respective States relating to the taxes to which this Agreement applies.

¹ Came into force on 29 March 1995 by notification, in accordance with article 28.

Article 3 General definitions

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

- (a) (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 which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
- (ii) the term "Australia", when used in a geographical sense, excludes all external territories other than:
 - (A) the Territory of Norfolk Island;
 - (B) the Territory of Christmas Island;
 - (C) the Territory of Cocos (Keeling) Islands;
 - (D) the Territory of Ashmore and Cartier Islands;
 - (E) the Territory of Heard Island and McDonald Islands; and
 - (F) the Coral Sea Islands Territory,and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;
- (b) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;
- (c) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (d) the term "competent authority" means:
 - (i) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner; and

- (ii) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;
- (e) the terms "a Contracting State" and "other Contracting State" mean New Zealand or Australia, the Governments of which have concluded this Agreement, as the context requires;
- (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 the ship or aircraft is operated solely from a place or between places in the other Contracting State;
- (h) the term "New Zealand tax" means tax imposed by New Zealand, being tax to which this Agreement applies by virtue of Article 2;
- (i) the term "paid", in relation to any amount, includes distributed (whether in cash or other property), credited or dealt with on behalf of a person or at that person's direction; and the terms "pay", "payable" and "payment" have corresponding meanings;
- (j) the term "person" includes an individual, a company and any other body of persons;
- (k) the term "tax" means New Zealand tax or Australian tax, as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax.

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 beneficially entitled to such dividends, interest or royalties.

3. In the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the law of that State from time to time in force relating to the taxes to which this Agreement applies.

Article 4 Residence

1. For the purposes of this Agreement, a person is a resident of a Contracting State:
 - (a) in the case of New Zealand, if the person is resident in New Zealand for the purposes of New Zealand tax; and
 - (b) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax.
2. A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.
3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the status of the person shall be determined in accordance with the following rules:
 - (a) the person shall be deemed to be a resident solely of the State in which a permanent home is available to the person; if a permanent home is available to the person in both States, the person shall be deemed to be a resident solely of the State with which the person's personal and economic relations are closer;
 - (b) if the person is unable to be deemed to be a resident solely of a State in accordance with the provisions of subparagraph (a), the person shall be deemed to be a resident solely of the State in which the person has an habitual abode;
 - (c) if the person has an habitual abode in both States or in neither of them, the person shall be deemed to be a resident solely of the State of which the person is a citizen.
4. Where by reason of the provisions of paragraphs 1 and 2 a person other than an individual is a resident of both Contracting States then it shall be deemed to be a resident solely of the Contracting 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.