Draft Order in Council laid before the House of Commons under the Income and Corporation Taxes Act 1988, s788 (10), for an Address to Her Majesty from that House praying that the Order be made.

DRAFT STATUTORY INSTRUMENTS

2004 No.

INCOME TAX

The Double Taxation Relief (Taxes on Income) (New Zealand) Order 2004

Made - - - - 2004

At the Court at Buckingham Palace, the day of 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988(**1**), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (New Zealand) Order 2004.

2. It is hereby declared—

(a) that the arrangements specified in the Protocol set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (New Zealand) Order 1984(**2**), have been made with the Government of New Zealand with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of New Zealand;

(**1**) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended: the relevant amendment is that made by section 198(1) and (2) of the Finance Act 2003 (c. 14).

(**2**) SI 1984/365.

(b) that those arrangements include provisions with respect to the exchange of information forseeably relevant to the administration or enforcement of the domestic laws of the United Kingdom and the laws of New Zealand concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(c) that it is expedient that those arrangements should have effect.

Clerk of the Privy Council

SCHEDULE

PART I

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF NEW ZEALAND TO AMEND THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS, SIGNED AT LONDON ON 4 AUGUST 1983

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand;

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, signed at London on 4 August 1983 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Paragraph (6) of Article 8 of the Convention shall be deleted and the following new paragraph shall be inserted immediately after paragraph (5) of that Article:

"(6) Notwithstanding the provisions of this Article, income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, in the case of insurance other than life insurance, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other Contracting State, otherwise than through a permanent establishment situated in that other State, the income or profits derived by the enterprise from the insurance of those risks shall in that other State not exceed 10 percent of the gross premiums paid for the insurance of those risks."

ARTICLE II

Article 11 of the Convention shall be deleted and replaced by the following:

"ARTICLE 11

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 15 percent 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, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident and also includes any other item which, under the laws of the State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) of this Article 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 8 or 15 of this Convention, 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

(6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment."

ARTICLE III

The following new paragraph shall be inserted immediately after paragraph (8) of Article 12 of the Convention:

"(9) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment."

ARTICLE IV

The following new paragraph shall be inserted immediately after paragraph (6) of Article 13 of the Convention:

"(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment."

ARTICLE V

(1) Paragraph (1) of Article 14 of the Convention shall be deleted and replaced by the following:

> "(1) Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 7 of this Convention and situated in the other Contracting State, or from the alienation of shares in a company deriving their value or the greater part of their value directly or indirectly from such property, may be taxed in that other State."

(2) Paragraph (4) of Article 14 of the Convention shall be deleted and the following new paragraphs shall be inserted immediately after paragraph (3) of that Article:

> "(4) Income or gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.
>
> (5) The provisions of this Article shall not affect the right of the United Kingdom to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six fiscal years immediately preceding that year."

ARTICLE VI

The following new Article 21A shall be inserted: