

AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND

AND

THE GOVERNMENT OF BERMUDA (AS AUTHORISED BY) THE GOVERNMENT OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

FOR

THE ALLOCATION OF TAXING RIGHTS WITH RESPECT TO CERTAIN INCOME OF  
INDIVIDUALS

AND

TO ESTABLISH A MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER  
PRICING ADJUSTMENTS

The Government of New Zealand and the Government of Bermuda (as authorised by) the Government of the United Kingdom of Great Britain and Northern Ireland,

Recognising that the two Governments have concluded an Agreement on the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

## ARTICLE 1

### PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

## ARTICLE 2

### TAXES COVERED

1 The existing taxes to which this Agreement shall apply are the income taxes imposed on behalf of the Contracting Parties, irrespective of the manner in which they are levied.

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other within a

reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Contracting Party.

## ARTICLE 3

### DEFINITIONS

1 For the purposes of this Agreement, 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 "Bermuda" means the Islands of Bermuda;
- (c) the term "competent authority" means in the case of New Zealand the Commissioner of Inland Revenue or an authorised representative of the Commissioner and, in the case of Bermuda means the Minister of Finance or an authorised representative of the Minister;
- (d) the term "Contracting Party" means New Zealand or Bermuda as the context requires;
- (e) the term "national" means
  - (i) for New Zealand, an individual who possesses the nationality or citizenship of New Zealand; and
  - (ii) for Bermuda, an individual who possesses Bermudian status as defined by the Bermuda Immigration and Protection Act 1956;
- (f) the term "person" includes an individual, a company and any other body of persons;
- (g) the term "tax" means New Zealand tax or Bermuda tax as the context requires; and

- (h) the term "transfer pricing adjustment" means an adjustment made by the competent authority of a Contracting Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

2 As regards the application of this Agreement at any time by a Contracting Party, 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 Party, for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## ARTICLE 4

### RESIDENT

- 1 For the purposes of this Agreement, the term "resident of a Contracting Party" means:
- (a) in the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax; and
  - (b) in the case of Bermuda, an individual who is ordinarily resident in Bermuda; and a company, a partnership, trust or association created under the laws of Bermuda.
- 2 A person is not a resident of a Contracting Party for the purposes of the Agreement if the person is liable to tax in that Party in respect only of income from sources in that Party.
- 3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting Parties, then the person's status shall be determined as follows:
- (a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Party with

which the individual's personal and economic relations are closer (centre of vital interests);

- (b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party of which the individual is a national;
- (c) if the individual is a national of both Parties or of neither of them, the competent authorities of the Contracting Parties shall endeavour to resolve the question by mutual agreement.

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

## ARTICLE 5

### PENSIONS

1 Pensions, (including government pensions) annuities and other remunerations paid to an individual who is a resident of a Contracting Party in consideration of past employment shall be taxable only in that Party.

2 Pensions and other payments made under the social security legislation of a Contracting Party to an individual who is a resident of the other Contracting Party shall be taxable only in that other Party.

3 However, paragraphs 1 and 2 of this article shall not apply where the pension, payment, annuities or other remuneration is not subject to tax in the Contracting Party of which the individual is a resident.

## ARTICLE 6

## GOVERNMENT SERVICE

- 1 (a) Salaries, wages and other similar remuneration, other than pensions, paid by the Government of Bermuda to an individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from New Zealand tax if the individual is not resident in New Zealand or is resident in New Zealand solely for the purposes of rendering those services.
  - (b) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of New Zealand to an individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from Bermuda tax if the individual is not resident in Bermuda or is resident in Bermuda solely for the purposes of rendering those services.
- 2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting Party thereof may be taxed in accordance with the laws of a Contracting Party.

## ARTICLE 7

## STUDENTS

Payments which a student or business apprentice, who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is temporarily present in the first-mentioned Party solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that Party, provided such payments arise from sources outside that Party.

## ARTICLE 8

MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING  
ADJUSTMENTS

1 Where a resident of a Contracting Party considers the actions of the other Contracting Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Party. The case must be presented within 3 years of the first notification of the adjustment.

2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Contracting Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

## ARTICLE 9

## EXCHANGE OF INFORMATION

The competent authorities of the Contracting Parties shall exchange such information as is relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with provisions of the Agreement on the Exchange of Information with Respect to Taxes concluded by the Contracting Parties.

## ARTICLE 10

## ENTRY INTO FORCE

The Contracting Parties shall notify each other, in writing, through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement on the Exchange of Information with Respect to Taxes is in force between the Contracting Parties, thereupon have effect for any year of income beginning on or after the thirteenth month next following the entry into force of this Agreement.

## ARTICLE 11

## TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the Contracting Parties may, after the expiration of 3 years from the date of its entry into force, give to the other Contracting Party through the diplomatic channel written notice of termination.

2 Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of the receipt of notice of termination by the other Contracting Party.