



International treaty examination of taxation agreements with the Republic of South Africa, the United Arab Emirates, the Republic of Chile, the United Kingdom of Great Britain and Northern Ireland, the Republic of the Philippines, and the Kingdom of the Netherlands

Report of the Finance and Expenditure Committee

The Finance and Expenditure Committee has conducted an international treaty examination of the following double taxation agreements:

- Agreement between the Government of New Zealand and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income
- Agreement between the Government of New Zealand and the Government of the United Arab Emirates for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and Protocol
- Convention Between New Zealand and the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Protocol to the Convention between the Republic of Chile and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
- Protocol between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland 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
- Protocol amending the Convention between the Government of New Zealand and the Government of the Republic of the Philippines for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

- Second Protocol Amending the Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with Protocol, Signed at the Hague on 15 October 1980
- Convention between New Zealand and the Kingdom of the Netherlands for Mutual Assistance in the Recovery of Tax Claims.

We have no matters to bring to the attention of the House.

The National Interest Analyses for these treaties are appended to this report.

Appendix A

Agreement between the Government of New Zealand and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

National Interest Analysis

Date of Proposed Binding Treaty Action

The Minister of Foreign Affairs signed the *Agreement between the Government of New Zealand and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (the DTA) with South Africa on 6 February 2002. Subject to the successful completion of the international treaty examination process, the DTA will be incorporated into domestic legislation through an Order in Council. The DTA will enter into force by way of an exchange of notes between New Zealand and South Africa, in which each party will notify the other of the completion of their constitutional requirements for giving effect to the DTA in their respective domestic laws.

Reasons for New Zealand to Become a Party to the Treaty

2 New Zealand is party to 27 double tax agreements (DTAs), which are primarily aimed at reducing tax impediments to cross-border trade and investment, but which also help tax administrations to detect and prevent tax evasion.

3 The DTA with South Africa will facilitate increased trade and investment between our two countries by reducing the double taxation of cross-border transactions. Such double taxation arises because both countries will generally tax the same income. The DTA allocates taxing rights between the two countries. This will result in one or both countries having the right to tax the income. Where both countries enjoy this right, the DTA provides that the country of residence will give a credit for tax paid in the country of source. The DTA gives residents of both countries who are considering entering into cross-border trade and investment greater certainty of tax treatment. The DTA also contains a mutual agreement procedure for resolving disputes or issues that might arise in relation to the DTA.

4 The level of trade is one factor in deciding with which country to negotiate a DTA. The level of imports from and exports to South Africa amounted to \$129mil and \$101.7mil respectively for the year ended June 2003. The extent of trade with South Africa is at a level where the conclusion of a DTA is likely to have beneficial results for both countries.

5 The DTA also assists tax administrations in the prevention of fiscal evasion by providing for the exchange of information on tax matters between two countries. The DTA with South Africa will bring to 28 the number of DTAs in our tax treaty network with our major trade and investment partners.

Advantages and Disadvantages to New Zealand of the Treaty entering into Force

6 The DTA will be advantageous to New Zealand because it will remove tax impediments to cross-border transactions between New Zealand and the Republic of South Africa – in particular, the double taxation of income. The DTA will regulate how transactions should be taxed between the two countries so the income is effectively taxed only once. It will reduce withholding taxes on interest, dividends and royalties to 10%, 15% and 10% respectively, and will exempt many short-term activities of individuals and businesses in the host country. Where both countries are permitted to impose tax, it will ensure that the country of residence allows a credit for the tax paid in the country of source. The DTA will provide taxpayers with greater certainty of tax treatment, along with a mutual agreement procedure for resolving disputes issues that may arise in relation to the DTA. The DTA will also assist the tax administrations of both countries by facilitating the exchange information relating to taxes, and will.

7 A disadvantage of the DTA is that New Zealand may forgo some revenue because of the allocation of taxing rights to South Africa under the DTA. However, since taxing rights are allocated on a reciprocal basis the overall effect of the DTA is likely to be revenue neutral. The requirement for New Zealand to provide information on tax matters to South Africa under the DTA's exchange of information provisions may be seen as a disadvantage. However, again, the ability to request information is reciprocal, and New Zealand's experience with exchange of information in relation to its 27 other DTAs is predominantly positive.

8 On balance, it is in New Zealand's interest to conclude a DTA with South Africa. It is expected to enhance cross-border trade and investment and will assist the New Zealand Government in the prevention of fiscal evasion.

Obligations

9 A DTA can only reduce tax already imposed under domestic law; it cannot itself impose tax. The DTA does not impose requirements on taxpayers. The obligations it does impose are on the countries to the treaty and restricts their taxing rights under domestic law on a reciprocal basis.

10 Under domestic law New Zealand taxes its tax residents based on their New Zealand and worldwide income. Non-residents are taxed only on their New Zealand-sourced income. South Africa has a similar income tax system. This gives rise to the possibility that cross border flows of income will be subject to double taxation. The DTA provides a way of allocating taxing rights as between New Zealand and South Africa. Under this DTA, New Zealand and South Africa will be required to comply with the following rules when imposing tax on residents of either country.

- Income from immovable property will generally be taxed in the country where the property is situated. [Article 6 of the DTA.]

- Business profits will generally be taxable only in the country where the business is resident. However, the profit derived through a permanent establishment situated in the other country may be taxed in that country. A permanent establishment generally exists when there is a fixed base in the country in question where the business of an enterprise is carried on. [Article 7 of the DTA refers.]
- Profits of an enterprise of a country from the operation of ships or aircraft shall be taxable only in that country, subject to various specific rules applicable in specific situations. [Article 8 of the DTA refers.]
- Dividends paid by a company of one country to a resident of the other country may be taxed in that other country. The source country resident may also tax the dividend up to a maximum of 15 per cent on the gross amount of the dividends. [Article 10 of the DTA refers.]
- Interest may generally be taxed in both countries. However, the country in which the interest arises must not impose tax in excess of 10 per cent. [Article 11 of the DTA refers.]
- Royalties may generally be taxed in both countries. However, the country in which the royalties arise must not impose tax in excess of 10 per cent of the royalties. [Article 12 of the DTA refers.]
- Specific rules apply to the taxation of income, profits or gains derived from the alienation of property. In the case of immovable property the profits are taxable where the property is situated. [Article 13 of the DTA refers.]
- Income from employment will be taxable only in the country where the employee is resident, unless the employment is performed in the other country. In this case, the country where the employment is performed may also tax the income, if the employee is present for 183 days and conditions are met. [Article 14 of the DTA refers.]
- Directors' fees may be taxed in the country where the relevant company is resident. [Article 15 of the DTA refers.]
- Entertainers and sportspersons may be taxed in the country in which the activities of the sportsperson or entertainer take place. [Article 16 of the DTA refers.]
- Pensions and annuities are only taxable in the country where recipient is resident. [Article 17 of the DTA refers.]
- Salaries and wages for services to a Government of one country are generally exempt from tax in the other country. [Article 18 of the DTA refers.]
- Students are generally not taxed on payments received from outside the country when those payments are for the maintenance and education of the student. [Article 19 of the DTA refers.]

- New Zealand has to comply with the various administrative requirements of the DTA that make its operation possible. These include, in particular, the elimination of double taxation by giving credits for overseas tax paid in certain situations; not enacting tax laws that discriminate against residents of South Africa (vis-à-vis residents of any other state); complying with the mutual agreement procedures set out in the DTA; and complying with the exchange of information procedures. [Articles 21, 22 and 24 of the DTA refer.]

Economic, Social, Cultural and Environmental Effects

11 No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

Costs

12 It is possible that the DTA may result in some cost to New Zealand, in terms of revenue forgone, but if so this will be very minor given that the DTA has been negotiated on a reciprocal basis.

Future Protocols

13 None anticipated.

Implementation

14 Subject to the successful completion of the international treaty examination process, this DTA will be implemented by Order in Council pursuant to section BH 1(3) of the Income Tax Act 1994.

15 This agreement will be implemented by way of an overriding treaty regulation. Section BH 1 of the Income Tax Act 1994 enables DTAs to be given effect by Order in Council. It also provides that the DTA will override the Income Tax Act 1994 and any other enactment relating to income tax, unpaid tax and the exchange of information relating to a tax. This override is necessary to give effect to the terms of the DTA and will effectively override the Income Tax Act 1994, the Tax Administration Act 1994 and the Goods and Services Tax Act 1985.

Consultation

16 The Treasury agrees with the terms of the DTA.

Withdrawal or Denunciation

17 Article 27 provides that either contracting country may terminate the DTA by giving notice, through diplomatic channels, of termination on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force.

Prepared by Inland Revenue Department
November 2003

Appendix B

Agreement between the Government of New Zealand and the Government of the United Arab Emirates for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and Protocol

National Interest Analysis

Date of Proposed Binding Treaty Action

The Minister of Finance and Revenue signed *the Agreement between the Government of New Zealand and the Government of the United Arab Emirates for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income* and Protocol (the DTA) with the United Arab Emirates (UAE) on 22 September 2003. Subject to the successful completion of the international treaty examination process, the DTA will be incorporated into domestic legislation through an Order in Council. The DTA will enter into force by way of an exchange of notes between New Zealand and the United Arab Emirates, in which each party will notify the other of the completion of their constitutional requirements for giving effect to the DTA in their respective domestic laws.

Reasons for New Zealand to Become a Party to the Treaty

2 New Zealand currently has 27 double tax agreements (DTAs) in force. They are primarily aimed at reducing tax impediments to cross-border trade and investment, but also help tax administrations to detect and prevent tax evasion.

3 DTAs give residents of both countries who are considering entering into cross-border trade and investment greater certainty of tax treatment. DTAs also contain a mutual agreement procedure for resolving disputes or issues that might arise in relation to the DTA. DTAs also assist tax administrations in the prevention of fiscal evasion by providing for the exchange of information on tax matters between two countries.

4 The negotiation of a DTA with the UAE is unusual on one level because the UAE does not have a general income tax system and, therefore, double taxation does not generally arise in cross border transactions between New Zealand and the UAE. The UAE has, however, indicated that it may introduce a general income tax system at some stage in the future.

5 The main rationale for the DTA with the United Arab Emirates is to facilitate investment from the UAE into New Zealand. Due to the absence of a general income tax in the UAE against which New Zealand taxes would otherwise be credited, UAE investors will seek to receive the same after tax rate of return from New Zealand as they can earn elsewhere, including from countries that impose no tax on their investments. Consequently the imposition of full domestic New Zealand tax on UAE investments will, in many cases, result in the UAE investor requiring a rate of return from New Zealand investments which is grossed-up by the amount of New Zealand tax. In essence, UAE

investors are sensitive to New Zealand taxes and the imposition of New Zealand tax on the UAE investor could result in the UAE financing fewer projects in New Zealand. Further, where a higher rate of return is demanded than in the absence of tax, the tax cost would likely be borne by New Zealand factors of production, from whom it would be more efficient to collect the tax directly. Accordingly, this treaty relieves tax on UAE investments in accordance with New Zealand's treaty policy. In particular, UAE investors are likely to be less sensitive to tax on investments which can only be undertaken in New Zealand and the DTA generally retains full taxing rights over investments of this nature.

6 The UAE Government's main investment arm, the Abu Dhabi Investment Authority (ADIA), has significant investments overseas (in excess of US\$400 billion). Similarly the Dubai Investment and Development Authority (DIDA) has significant overseas investments, and the UAE private sector is understood to have in the vicinity of US \$600 billion available for investors. The UAE government has indicated that it is keen to diversify its investment portfolio into New Zealand as well as increase bilateral trade, joint ventures and education. However, the UAE emphasised that a DTA was a basic pre-requisite for any investment from the UAE due to UAE investors' sensitivity to New Zealand tax.

7 The level of trade is also a major factor in deciding with which countries to negotiate a DTA. The level of imports from and exports to the UAE amounted to \$357,068,000 and \$108,760,000 respectively for the year ended June 2003.

Advantages and Disadvantages to New Zealand of the Treaty entering into Force

8 The DTA will be advantageous to New Zealand. It follows the standard format of our other DTAs such that New Zealand enterprises dealing with the UAE will be subject to familiar rules. Although the problem of double taxation does not generally arise with the UAE, the significant level of trade between our two countries makes it important that residents of both countries have the comfort of certainty of tax treatment and the benefit of a mutual agreement procedure should they experience taxation difficulties.

9 The main advantage for New Zealand, however, is that the DTA opens up significant opportunities for foreign investment into New Zealand from the UAE. The UAE Government has made it clear that they are willing to look at investing into New Zealand provided a DTA is in place to provide relief from New Zealand taxes. Private sector investment from the UAE into New Zealand also has the potential to increase significantly, given the reduction of withholding tax rates under the DTA.

10 The DTA also advantages New Zealand in that it opens up other opportunities for the UAE to strengthen their relationship with New Zealand, particularly as the UAE have consistently noted that they see New Zealand as a safe, politically stable country. The negotiation of a DTA was a major factor in the decision of the UAE airline Emirates to commence a service to New Zealand. Further it is likely that the DTA will pave the way for fee-paying students to come to New Zealand to study at New Zealand educational institutions.

11 The ability to exchange information with the UAE will also be an advantage for New Zealand, as this will assist in the detection and prevention of tax avoidance and evasion.

12 The disadvantage of the DTA is that by allocating taxing rights between the two countries, New Zealand may forego revenue on any existing UAE investments. However, as mentioned in the discussion of the revenue implications of the DTA under the heading "Costs", UAE investment in New Zealand is likely to be negligible in the absence of a DTA.

13 A detailed aspect of this DTA is that it provides in the Protocol that the Contracting States recognise that sovereign immunity from income tax is provided to the Governments of both countries, including agencies that form an integral part of the Government. This provision clarifies that the DTA recognises and protects (but does not extend), the sovereign immunity doctrine that New Zealand applies to all countries.

14 Consistent with international norms, a restrictive doctrine of sovereign immunity operates in New Zealand. Under this doctrine immunity from judicial suit is provided only in respect of Government acts of a Government nature. It does not provide immunity for Government acts of a commercial nature. Therefore, if the UAE Government enters a transaction of a type that is open to a private citizen the act will be considered commercial or private in nature and sovereign immunity will not apply.

15 Any transactions falling outside the ambit of sovereign immunity will be taxed in New Zealand in accordance with the terms of the articles in the treaty. There is provision for special relief for Government and certain Government owned entities in these articles. Under paragraph 9 of the Protocol the Abu Dhabi Investment Authority and the Dubai Investment and Development Authority are recognised as government institutions that form an integral part of the UAE.

16 On balance, New Zealand stands to gain significant foreign direct investment from the implementation of the DTA and therefore, it is considered that it is in New Zealand's interests to enter into the DTA.

Obligations

17 The DTA does not impose requirements on taxpayers. The obligations it does impose are on the countries to the treaty and restricts their taxing rights under domestic law on a reciprocal basis. (A DTA can only reduce tax already imposed under domestic law; it cannot impose tax.)

18 Under domestic law, New Zealand taxes its residents based on their New Zealand and worldwide income. Non-residents are taxed only on their New Zealand-sourced income. The UAE has a limited income tax system for oil companies and foreign owned banks. The DTA provides a way of allocating taxing rights as between New Zealand and the UAE. Under this DTA, New Zealand and the UAE will be required to comply with the following rules when imposing tax on residents of either country.

- Income and profits from hydrocarbons situated in the UAE will remain subject to the domestic laws and regulations of the UAE. [Article 3 of the DTA refers.]
- Income from immovable property will generally remain taxable in the country where the property is situated. [Article 7 of the DTA refers.]

- Business profits of an enterprise will be taxable only in the country where the enterprise is resident unless the profits are derived through a permanent establishment situated in the other country. In that case the profits may be taxed in that country. A permanent establishment is essentially a fixed base in the country in question where the business of an enterprise is carried on. [Article 8 of the DTA refers.]
- Profits of an enterprise of a country from the operation of ships or aircraft will be taxable only in that country. Such profits may also be taxable in the other country where the profit relates to operations confined solely to places in that other state. [Article 9 of the DTA refers.]
- Dividends paid by a company of one country to a resident of the other country may be taxed in that other country. The source country may also tax the dividend up to a maximum of 15 per cent on the gross amount of the dividends. [Article 11 of the DTA refers.]
- Interest may generally be taxed in both countries. However, the country in which the interest arises must not impose tax in excess of 10 per cent. In cases where the Government of a country or a Government owned financial institution derives interest from the other country, the country in which the interest arises cannot impose any tax. Paragraph 9 of the Protocol clarifies that the ADIA and DIDA are recognised as being an integral part of the Government for these purposes. [Article 12 of the DTA refers.]
- Royalties may generally be taxed in both countries. However, the country in which the royalties arise must not impose tax in excess of 10 per cent of the royalties. [Article 13 of the DTA refers.]
- Specific rules apply to the taxation of income, profits or gains derived from the alienation of property. In the case of immovable property the gains are taxable where the property is situated. In the case of movable property the gains are generally taxable in the country in which the alienator is resident. [Article 14 of the DTA refers.]
- Income from employment will be taxable only in the country where the employee is resident, unless the employment is performed in the other country. In this case, the country where the employment is performed may also tax the income, if the employee is present for more than 183 days and certain other conditions are met. [Article 16 of the DTA refers.]
- Directors' fees may be taxed in the country in which the company is resident. [Article 17 of the DTA refers.]
- Entertainers and sportspersons may be taxed in the country in which the activities of the entertainer or sportsperson take place. The country in which the activities take place cannot impose tax if the entertainer or sportsperson is sponsored by the Government of the other country. [Article 18 of the DTA refers.]
- Pensions and annuities are taxable only in the country where the recipient is resident. Government pensions are in limited circumstances taxable in both States. [Articles 19 and 20 of the DTA refer.]

- Salaries and wages for services to a Government of one country are generally exempt from tax in the other country. [Article 20 of the DTA refers.]
- Students from one country who study in the other country are generally not taxed on payments received from outside the country when those payments are for the maintenance and education of the student. However a person can only benefit from this for five fiscal years. [Article 21 of the DTA refers.]
- New Zealand has to comply with the various administrative requirements of the DTA that make its operation possible. These include, in particular, the elimination of double taxation by giving credits for overseas tax paid in certain situations; complying with the mutual agreement procedures set out in the DTA; and complying with the exchange of information procedures. [Articles 23 , 24 and 25 of the DTA refer.]
- Sovereign immunity from income tax is provided to the Government of the United Arab Emirates, including agencies that form an integral part of the Government. In essence, this means that transactions in New Zealand by the United Arab Emirates Government or its agencies that are of a 'government' rather than a commercial nature are exempt from income tax. [Paragraph 9 of the Protocol refers.]
- The Abu Dhabi Investment Authority and the Dubai Investment and Development Authority are recognised as government institutions by the competent authorities of the Contracting States. [Paragraph 1 of the Protocol and Paragraph 9 of the Protocol refers.]
- The provision in the DTA that refers to Income from Employment shall apply from the 27 October 2002. [Paragraph 11 of the Protocol refers.]

Economic, Social, Cultural and Environmental Effects

19 No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

Costs

20 New Zealand may forgo some revenue from the limitation of our taxing rights in relation to income flows between New Zealand and the UAE which we are currently able to tax under our domestic laws. This revenue cost could include, for instance, tax forgone in relation to short-term activities of the UAE residents in New Zealand which the DTA will exempt. It could also include tax forgone on dividends, interest and royalties paid by New Zealand residents to the residents of the UAE in respect of which, the DTA will lower withholding rates. This could result in a revenue loss in relation to revenue collected on any existing investment from the UAE. The extent of this revenue cost, if any, depends on whether significant investment activity would take place in New Zealand in the absence of a DTA. Discussions with the UAE indicate that this would be unlikely. However, if as a result of the new DTA, UAE investment in New Zealand increases significantly, the revenue collected on that new investment together with the economic benefits associated with the new investment, will outweigh any such revenue cost.

Future Protocols

21 No future protocols are anticipated.

Implementation

22 Subject to the successful completion of the international treaty examination process, this DTA will be implemented by Order in Council in accordance with section BH 1(3) of the Income Tax Act 1994.

23 This agreement will be implemented by way of an overriding treaty regulation. Section BH 1 of the Income Tax Act 1994 enables DTAs to be given effect by Order in Council. It also provides that the DTA will override the Income Tax Act 1994 and any other enactment relating to income tax, unpaid tax and the exchange of information relating to a tax. This override is necessary to give effect to the terms of the DTA and will effectively override the Income Tax Act 1994, the Tax Administration Act 1994.

Consultation

24 The Treasury agrees with the terms of the DTA. No private sector consultation was entered into.

Withdrawal or Denunciation

25 Article 28 of the DTA provides that either contracting country may terminate the DTA by giving notice, through diplomatic channels, of termination on or before 30 June in any calendar year beginning after the expiration of five years from the date of its entry into force.

Appendix C

Convention Between New Zealand and the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Protocol to the Convention between the Republic of Chile and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

National Interest Analysis

Date of Proposed Binding Treaty Action

The Minister of Finance and Revenue signed the *Convention Between New Zealand and the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* and *Protocol to the Convention between the Republic of Chile and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (together referred to as “the DTA” in this document) on 10 December 2003. Subject to the successful completion of the international treaty examination process, the DTA will be incorporated into domestic legislation through an Order in Council. The DTA will enter into force by way of an exchange of notes between New Zealand and Chile, in which each party will notify the other of the completion of their constitutional requirements for giving effect to the DTA in their respective domestic laws.

Reasons for New Zealand to [complete]

2 New Zealand currently has 27 double tax agreements (DTAs) in force. They are primarily aimed at reducing tax impediments to cross-border trade and investment, but also help tax administrations to detect and prevent tax evasion.

3 The negotiations with Chile were entered into in accordance with the Government’s Latin American Strategy, and the DTA represents our first with that region. Consultation with the Ministry of Foreign Affairs and Trade and the business community highlighted Chile as our highest priority in Latin America.

4 The DTA with Chile will facilitate increased trade and investment between our two countries by reducing the double taxation of cross-border transactions. Such double taxation arises because both countries will generally tax the same income. The DTA allocates taxing rights between the two countries. This will result in one or both countries having the right to tax the income. When both countries enjoy this right, the DTA provides that the country of residence will give a credit for tax paid in the country of source. The DTA gives residents of both countries who are considering entering into cross-border trade and investment greater certainty of tax treatment. The DTA also contains a mutual agreement procedure for resolving disputes or issues that might arise in relation to the DTA.

5 In relation to trade, the level of imports from and exports to Chile amounted to \$31.0m and \$32.8m respectively for the year ended June 2003. The extent of trade with Chile is at a level where the conclusion of a DTA is likely to have beneficial results for both countries.

6 The DTA also assists tax administrations in the prevention of fiscal evasion by providing for the exchange of information on tax matters between two countries.

Advantages and Disadvantages to New Zealand of the Treaty entering into Force

7 The DTA will be advantageous to New Zealand because it will remove tax impediments to cross-border transactions between New Zealand and Chile – in particular, the double taxation of income. The DTA will regulate how transactions should be taxed between the two countries so the income is effectively taxed only once. It will generally reduce withholding taxes on dividends, interest and royalties to 15 %, 15 % and 10 % respectively (but see below on these withholding rates), and will exempt many short-term activities of individuals and businesses in the host country. Where both countries are permitted to impose tax, it will ensure that the country of residence allows a credit for the tax paid in the country of source. The DTA will provide taxpayers with greater certainty of tax treatment, along with a mutual agreement procedure for resolving dispute issues that may arise in relation to the DTA. The DTA will also assist the tax administrations of both countries by facilitating the exchange of information relating to taxes.

8 A disadvantage of the DTA is that New Zealand will forgo some revenue because of the reduction in New Zealand tax and the allocation of taxing rights to Chile under the DTA. Although, as explained in the discussion under “Costs”, the reciprocal nature of the DTA means that these revenue costs will be offset by increases in revenue where taxing rights are allocated to New Zealand and where Chilean tax is correspondingly reduced under the DTA.

9 A feature that is unique to this DTA is the taxation of dividends. Dividends from one State paid to a resident of the other State may be taxed by both States. The DTA provides that the tax payable in the source State is limited to 15 per cent of the gross amount of dividends. This limitation applies only to New Zealand and not to Chile – which is an unusual feature of this DTA. Usually the limitation on source taxing rights is reciprocal, but this was not possible in the case of Chile because of Chile’s company tax system. Chile has a low (15 %) company tax rate but a high (35 per cent) withholding tax on distributions. The company tax is then credited against the withholding tax to reduce the total tax burden to 35 % under the DTA. New Zealand will impose a 33 % company tax and 15 % withholding tax on distributions. Generally, however, the total New Zealand tax burden will not exceed 33 % because of the application of our Foreign Investor Tax Credit rules which reduce the company tax rate by an amount equal to the withholding tax.

10 As the total tax impost in each country in respect of company profits and distributions is broadly similar – New Zealand 33 % and Chile 35 % – the absence of reciprocity in the DTA is not as inequitable as it may seem on the face of it. Other countries negotiating with Chile have reached accommodation on this issue in a variety of ways. However, New Zealand’s preference is to revert to a reciprocal formulation in the DTA if Chile moves to a company tax system that is similar to our own. The DTA contains a review clause to

ensure that if Chile makes any changes to its taxation of company profits or distributions, that render the DTA inequitable, the two sides will re-enter negotiations with the aim of restoring an appropriate balance.

11 The requirement for New Zealand to provide information on tax matters to Chile under the DTA's exchange of information provisions may be seen as a disadvantage. However, again, the ability to request information is reciprocal, and New Zealand's experience with exchange of information in relation to its 27 other DTAs is predominantly positive (the benefit gained from being able to request information from the other country more than offsetting the administrative burden of having to provide information pursuant to their requests.)

12 On balance, it is in New Zealand's interest to conclude a DTA with Chile. It is expected to enhance cross-border trade and investment and will assist the New Zealand Government in the prevention of fiscal evasion.

Obligations

13 The DTA does not impose requirements on taxpayers. The obligations it does impose are on the countries to the DTA and restricts their taxing rights under domestic law generally on a reciprocal basis. (A DTA can only reduce tax already imposed under domestic law; it cannot impose tax.)

14 Under domestic law, New Zealand taxes its residents based on their New Zealand and worldwide income. Non-residents are taxed only on their New Zealand-sourced income. Chile has a similar income tax system. This gives rise to the possibility that cross border flows of income will be subject to double taxation. The DTA provides a way of allocating taxing rights as between New Zealand and Chile. Under this DTA, New Zealand and Chile will be required to comply with the following rules when imposing tax on residents of either country.

- Income from immovable property will generally be taxed in the country where the property is situated. [Article 6 of the DTA refers.]
- Business profits of an enterprise will be taxable only in the country where the enterprise is resident unless derived through a permanent establishment situated in the other country. In that case the profits may be taxed in that country. A permanent establishment generally exists when there is a fixed base in the country in question where the business of an enterprise is carried on. [Article 7 of the DTA refers.]
- Profits of an enterprise of a country from the operation of ships or aircraft will be taxable only in that country, except in the case of 'cabotage' (carriage within New Zealand) which is taxed on the same basis as any other business. [Article 8 of the DTA refers.]
- Dividends paid by a company of one country to a resident of the other country may be taxed in that other country. New Zealand may also tax the dividend up to a maximum of 15 per cent on the gross amount of the dividends if it is the source country. [Article 10 of the DTA refers. Please also refer to the discussion on this issue above under the heading *Advantages and Disadvantages to New Zealand of the Treaty entering into Force.*]

- Interest may generally be taxed in both countries. However, the country in which the interest arises must not impose tax in excess of 10 per cent on interest granted by loans from banks and insurance companies and 15 per cent in all other cases. [Article 11 of the DTA refers.]
- Royalties may generally be taxed in both countries. However, the country in which the royalties arise must not impose tax in excess of 10 per cent of the royalties. [Article 12 of the DTA refers.]
- Specific rules apply to the taxation of gains derived from the alienation of property. In the case of immovable property the gains are taxable where the property is situated. In the case of moveable property, the gains are generally taxable in the country where the alienator is resident. [Article 13 of the DTA refers.]
- Income from employment will be taxable only in the country where the employee is resident, unless the employment is performed in the other country. In this case, the country where the employment is performed may also tax the income, if the employee is present for 183 days and other conditions are met. [Article 14 of the DTA refers.]
- Directors' fees may be taxed in the country where the relevant company is resident. [Article 15 of the DTA refers.]
- Artistes and sportspersons may be taxed in the country in which the activities of the sportsperson or entertainer take place. [Article 16 of the DTA refers.]
- Pensions are taxable only in the country where recipient is resident. [Article 17 of the DTA refers.]
- Salaries and wages for services to a Government of one country are generally exempt from tax in the other country. [Article 18 of the DTA refers.]
- Students are generally not taxed on payments received from outside the country when those payments are for the maintenance and education of the student. [Article 19 of the DTA refers.]
- New Zealand has to comply with the various administrative requirements of the DTA that make its operation possible. These include, in particular, the elimination of double taxation by giving credits for overseas tax paid in certain situations; not enacting tax laws that discriminate against residents of Chile (vis-à-vis residents of any other state); complying with the mutual agreement procedures set out in the DTA; and complying with the exchange of information procedures. [Articles 21, 23, 24 and 25 of the DTA refer.]

Economic, Social, Cultural and Environmental Effects

15 No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

Costs

16 New Zealand may forgo some revenue from the limitation of our taxing rights in relation to some income flows between New Zealand and Chile which we are currently able to tax under our domestic laws. This revenue cost could include, for instance, tax

forgone in relation to the short-term activities of Chilean residents in New Zealand, which the DTA will exempt. It could also include tax forgone in relation to dividends, interest and royalties paid by New Zealand residents to residents of Chile, in respect of which the DTA will lower withholding taxes. However, Chile will also be similarly constrained from taxing income flows from Chile to New Zealand, and this reduced Chilean tax will often flow through to the New Zealand tax base through a reduction in credits for foreign tax paid. It is likely that these factors will offset each other to some extent over time. But, to the extent that the cost to the New Zealand revenue is not fully offset by the reduction of creditable Chilean taxes, we would expect that the economic benefits of the DTA will outweigh these costs.

Future Protocols

17 No future protocols are anticipated.

Implementation

18 Subject to the successful completion of the international treaty examination process, this DTA will be implemented by Order in Council in accordance with section BH 1(3) of the Income Tax Act 1994.

19 This agreement will be implemented by way of an overriding treaty regulation. Section BH 1 of the Income Tax Act 1994 enables DTAs to be given effect by Order in Council. It also provides that the DTA will override the Income Tax Act 1994 and any other enactment relating to income tax, unpaid tax and the exchange of information relating to a tax. This override is necessary to give effect to the terms of the DTA and will effectively override the Income Tax Act 1994 and the Tax Administration Act 1994.

Consultation

20 The Treasury agrees with the terms of the DTA. Some consultation with private sector firms was undertaken before and during negotiations.

Withdrawal or Denunciation

21 Article 29 provides that either contracting country may terminate the DTA by giving notice of termination, through diplomatic channels, after the expiration of five years from the date of its entry into force.

Appendix D

Protocol between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland 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

National Interest Analysis

Date of Proposed Binding Treaty Action

The New Zealand High Commissioner to the United Kingdom signed the *Protocol between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland 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 Protocol) on 4 November 2003. Following the completion of the international treaty examination process, the Protocol will be incorporated into domestic legislation through an Order in Council. The Protocol will enter into force by way of an exchange of notes between New Zealand and the United Kingdom (UK), in which each party will notify the other of the completion of their constitutional requirements for giving effect to the Protocol in their respective domestic laws.

Reasons for New Zealand to become a party to the Treaty

- 2 New Zealand currently has 27 double tax agreements (DTAs) in force. They are primarily aimed at reducing tax impediments to cross-border trade and investment, but which also help tax administrations to detect and prevent tax evasion. 2
- 3 The Protocol amends a DTA which New Zealand already has with the UK that came into force in December 1983 and which is more correctly referred to as the *Convention between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains* (the DTA).
- 4 Negotiations for a protocol were initiated by New Zealand following advice from the UK that it had modified its position on the exchange of information to allow it to use its information gathering powers to obtain information requested by its DTA partners where there was no domestic tax interest (i.e. where no UK tax was also at stake). Before this change of policy, New Zealand was unable to obtain full information, in all cases, from the UK to assist with audits of New Zealand taxpayers. The change in UK domestic law now ensures that information requested by New Zealand can be obtained without the need for a UK tax interest. However, the wording of the exchange of information provision in our DTA with the UK needed to be updated before we could take advantage of this new position. New Zealand already exchanges full information with all our DTA partners.

5 The UK also wished to amend the DTA in order to address concerns over UK avoidance schemes designed to utilise the DTA to avoid UK capital gains tax. This is done by amending the article on the “alienation of property”.

6 The opportunity was also taken to make certain other minor amendments to the DTA to bring it up to date with developments in New Zealand, the UK and the OECD.

Advantages and Disadvantages to New Zealand of the Treaty Entering into Force

7 The primary advantage of the Protocol is that it ensures that New Zealand tax authorities will now be able to obtain full information from the UK to assist with audits of New Zealand taxpayers. This will significantly reduce the ability of New Zealand taxpayers to avoid or evade New Zealand tax on income sourced from the UK.

8 The anti-avoidance provisions in the “Dividends”, “Interest” and “Royalties” articles will help eliminate abuse of the DTA.

9 An Article dealing with “other income” is also inserted into the DTA. This article is a catch-all article which covers everything not covered by any of the other specific articles in the DTA. This article provides that any “other income” will be taxable in the country in which the recipient is resident. The advantage of this is that it provides certainty to taxpayers of both countries that no income will fall out of the DTA and be subject to unrelieved double taxation.

10 The Protocol ensures that New Zealand retains the right to tax income from insurance according to our domestic law provisions. This is an important New Zealand anti-avoidance provision designed to prevent the non-residents from otherwise using the DTA to recharacterise profits as insurance premiums and distribute them offshore free of New Zealand tax.

11 All these provisions are advantageous to New Zealand. The Protocol does not have any disadvantages for New Zealand. The other articles in the Protocol relate specifically to UK taxpayers. The change to the “Dividends” article ensures that the DTA remains relevant to the way the UK now taxes dividends. The changes to the “Alienation of Property” article are to prevent UK taxpayers avoiding UK capital gains tax on the sale of property.

Obligations

12 The Protocol will not impose requirements on taxpayers. The only obligations of a DTA are on the respective Governments to restrict their taxing rights under domestic law in certain circumstances. A DTA can only reduce tax already imposed under domestic law; it cannot itself impose tax. The Protocol modifies these DTA obligations as follows:

- Article 1 of the Protocol inserts a new paragraph 6 in Article 8 of the DTA concerning the taxation of cross border insurance premiums. Like the previous paragraph 6 the new paragraph allows New Zealand and the UK to tax income from insurance premiums under our domestic law. However, for insurance premiums (other than life insurance) paid for the insurance of risks situated in the other country, other than through a permanent establishment such as a branch, that other country can tax only 10% of the income derived from such premiums. This provision reflects the New Zealand domestic legislation.
- Article 2 of the Protocol deletes the current “Dividends” article (Article 11) and replaces it with a new one based on the standard OECD formulation. Paragraph 1 gives a taxing right to the country of residence of the person receiving the dividends. Paragraph 2 also entitles the country from which the dividends are paid to tax the dividends although this taxing right is generally limited to 15% of the gross amount of the dividends. Paragraph 3 defines the dividends to which the article applies as meaning income from shares and similar income. Paragraph 4 provides that paragraphs 1 and 2 do not apply if the owner of the dividends carries on business in the country from which the dividends are paid through a permanent establishment or a fixed base. Paragraph 5 prohibits extra-territorial taxation of dividends paid by a company which derives income from the other country. Paragraph 6 is the new anti-abuse provision to prevent the use of the DTA to avoid tax by taking advantage of the reduced withholding rates on dividends under the DTA. This paragraph is not in the standard OECD formulation although it is suggested in the commentary to the OECD Model Tax Convention.
- Articles 3 and 4 of the Protocol are the same as paragraph 6 of Article 2. They are to prevent the use of reduced withholding rates in the interest and royalties articles of the DTA to avoid tax.
- Article 5 deletes paragraphs 1 and 4 of the Alienation of Property in the DTA (Article 14) and inserts new paragraphs 1, 4 and 5. New paragraph 1 extends the rule dealing with income from the alienation of ‘immovable property’ (e.g. land and buildings) to include income from the alienation of shares deriving the greater part of their value from such property. This is primarily an anti-avoidance rule designed to ensure that a country does not lose taxing rights over its real property just because the shares in a company owning the property are sold rather than the property itself. New paragraph 4 corrects a typographical error in the old paragraph 4 of the Article by inserting the word ‘only’. An additional rule, paragraph 5, has been included to deal with the UK concerns over UK avoidance schemes designed to avoid UK capital gains tax by the alienator of the property becoming resident in New Zealand for the purposes of selling the property. The application of this provision is limited specifically to UK taxpayers. It ensures that, notwithstanding the rest of the article, the UK can levy capital gains tax on a person who is a UK resident during the year the property was alienated or at any time during the 6 years preceding that year.
- Article 6 of the Protocol inserts an article in the DTA dealing with “other income”. This article is a catch-all article which covers everything not covered by any of the other specific article of the DTA. It provides that any “other income” will be taxable in the country in which the recipient is resident.

- Article 7 of the Protocol deletes the existing Exchange of Information Article (Article 25) and replaces it with a new version which reflects the change in UK domestic law. Previously, the UK had only been able to use its 'third party' information powers to obtain or inspect documents held by banks and other persons if it was able to demonstrate to an independent tribunal that UK tax was at stake. Until now, this has meant that the domestic 'third party' information powers have not always been available to assist in complying with requests for information made under its DTAs (including its DTA with New Zealand). This position was changed in the UK Finance Act 2000. The UK will now be able to use its 'third party' information powers to obtain or inspect documents, including those held by banks, in order to respond to specific requests made under exchange of information provisions contained in DTAs or Tax Information Exchange Agreements (TIEAs). These powers may only be used if the DTA or TIEA in question specifically requires information to be obtained as well as disclosed for exchange of information purposes. The new Article 25 includes this requirement and so will enable New Zealand to take advantage of this change in UK domestic legislation.
- Article 8 of the protocol sets out when the provisions of the Protocol will apply from. As the UK were anxious to address their avoidance issues Article 5 applies from the date of signature of the Protocol. Similarly, Article 7 of the protocol will apply from the date of signature ensuring it will apply to all information exchanged or requested after this date (including tax matters relating to a time prior to signature). The rest of the Protocol will apply (in the case of New Zealand) from the first day of April following the entry into force of the Protocol.

Economic, Social, Cultural and Environmental Effects

13 No social, cultural or environmental effects are anticipated. Any economic effects will be favourable, as noted above.

Costs

14 There should be no revenue, administrative or compliance costs for New Zealand arising from the protocol. The UK will collect more tax as a result of closing down the loophole for avoiding capital gains tax. However, this is not revenue that New Zealand would have collected because we do not tax these gains under our domestic law. The UK may also have some collateral administrative costs associated with their broader obligations to exchange information that arise as a result of this protocol. There is no change to New Zealand's obligations to exchange information.

Future Protocols

15 No future protocols are anticipated.

Implementation

16 Subject to the successful completion of the international treaty examination process, this Protocol will be implemented by Order in Council pursuant to section BH 1(3) of the Income Tax Act 1994.

17 This agreement will be implemented by way of an overriding treaty regulation. Section BH 1 of the Income Tax Act 1994 enables DTAs and protocols which amend DTAs, to be

given effect by Order in Council. It also provides that these agreements will override the Income Tax Act 1994 and any other enactment relating to income tax, unpaid tax and the exchange of information relating to a tax. This override is necessary to give effect to the terms of the agreement and will effectively override the Income Tax Act 1994 and the Tax Administration Act 1994.

Consultation

18 The Treasury agrees with the terms of the Protocol. No private sector consultation was entered into.

Withdrawal or Denunciation

19 The Protocol can be terminated by terminating the DTA. The DTA can be terminated by giving notice, through diplomatic channels, of termination on or before 30 June in any calendar year.

Appendix E

Protocol Amending the Convention between the Government of New Zealand and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

National Interest Analysis

Date of Proposed Binding Treaty Action

The Commissioner of Inland Revenue signed the *Protocol amending the Convention between the Government of New Zealand and the Government of the Republic of the Philippines for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (the Second Protocol) on 21 February 2002. Subject to the successful completion of the international treaty examination process, the Second Protocol will be incorporated into domestic legislation through an Order in Council. The Second Protocol will enter into force by way of an exchange of notes between New Zealand and the Philippines, in which each party will notify the other of the completion of their constitutional requirements for giving effect to the Second Protocol in their respective domestic laws.

Reasons for New Zealand to become a party to the Treaty

2 New Zealand is party to 27 double tax agreements (DTAs), which are primarily aimed at reducing tax impediments to cross-border trade and investment, but which also help tax administrations to detect and prevent tax evasion.

3 New Zealand currently has a DTA with the Philippines that came into force on 1 April 1980 referred to as the *Convention between the Government of New Zealand and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (the DTA). When the DTA was negotiated the *Protocol to the Convention between the Government of New Zealand and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (the First Protocol) was also negotiated and came into force at the same time.

4 The Second Protocol modifies the DTA and First Protocol in several ways. The main change is that the Second Protocol closes down the potential for abuse of the tax sparing provisions in the DTA. It also contains provisions that update several other aspects of the DTA that were no longer in line with New Zealand's standard negotiating position. These generally relate to reductions in the level of withholding taxes imposed on cross border flows of dividends, interest, and royalties. Overall, the Second Protocol results in the application of the DTA and First Protocol being more favourable to New Zealand.

Advantages and Disadvantages to New Zealand of the Treaty Entering into Force

5 The Second Protocol is advantageous for New Zealand because it removes tax sparing. Tax sparing is a concession granted by developed countries, (in this case New Zealand) in their DTAs with developing nations. It ensures that tax incentives granted in the developing country to attract foreign investment will not be clawed back by the tax regime of the other country. In the case of New Zealand's DTAs, tax sparing works by permitting New Zealand taxpayers who invest in a developing country, in this case the Philippines, to take advantage of tax incentives offered there. The New Zealand taxpayers can then claim a foreign tax credit against their New Zealand tax liability on income earned from that investment as if it was tax paid in the other country.

6 The Second Protocol removes this tax sparing feature of the DTA. This will mean New Zealand taxpayers will no longer be able to claim foreign tax credits for taxes spared (not paid) in the Philippines. This will increase the taxes paid by those taxpayers in New Zealand.

7 Other amendments have also been made to the DTA and First Protocol in the Second Protocol to reduce withholding rates on dividends, interest and royalties on a reciprocal basis. These rate reductions bring the withholding rates in the DTA more in line with current New Zealand DTA policy. This is advantageous to New Zealand because it further reduces tax impediments associated with cross-border trade and investment with the Philippines. The article in the DTA dealing with transfer pricing adjustments between associated enterprises has also been amended by inserting a provision to ensure that correlative relief is provided in the other country once a transfer pricing adjustment has been made. This has the advantage of ensuring that double taxation does not arise as a result of a transfer pricing adjustment made in one country.

Obligations

8 The obligations under the Second Protocol are related to the collection of income tax in New Zealand and the Philippines. Under Article V of the Second Protocol New Zealand will no longer have to give tax credits for deemed tax paid in the Philippines. Prior to the Second Protocol, New Zealand was obliged to give tax credits under Article 23 of the DTA even though no tax was paid in the Philippines. Consequently the Second Protocol removes an obligation on New Zealand imposed by the DTA.

9 The Second Protocol also makes five other amendments to the DTA.

- A new paragraph 2 has been added to Article 9 of the DTA, which deals with transfer pricing adjustments between associated enterprises. The new paragraph provides a mechanism for correlative relief in the other country once a transfer pricing adjustment has been made, and is now a standard provision in New Zealand's negotiating model DTA. (This provision also accords with international standards.)
- Paragraph 2 of Article 10 of the DTA has been amended to reduce the withholding rate imposed on dividends, from a split rate of 15% (where the beneficial owner of the dividends is a company) and 25% (in all other cases), to a flat rate of 15% (applying to all dividends). The 15% rate is consistent with current New Zealand DTA policy.

- Paragraph 2 of Article 11 of the DTA has been amended to reduce the withholding rate imposed on interest from 15% to 10%. The 10% rate is consistent with current New Zealand DTA policy.
- Paragraph 2 of Article 12 of the DTA has also been amended to reduce the Philippines withholding rate imposed on royalties from a split rate of 15% (in the case of royalties paid by specified enterprises) and 25% (in all other cases) to a flat rate of 15% (applying to all royalties). The 15% rate is higher than the standard rate of 10% applying in most of New Zealand's DTAs, but does represent a reduction in Philippines tax, and is in line with the rate applying in some of our DTAs such as those with Canada, Fiji, Indonesia, Malaysia and Singapore.
- Finally, the definition of 'royalties' in paragraph 3 of Article 12 of the DTA has been updated to provide a formula which better takes into account modern technology. The new definition follows closely that used in the DTA recently agreed with Russia.

Economic, Social, Cultural and Environmental Effects

10 No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

Costs

11 The removal of tax sparing from the DTA does not impose any costs on New Zealand. On the contrary, it can only give rise to an increase in revenue to New Zealand.

12 There could be revenue costs associated with the application of the reduced withholding rates on interest and dividends from investments made by residents of the Philippines into New Zealand. However, these revenue costs could be offset by revenue gains associated with the reduction in withholding taxes imposed by the Philippines on interest, dividends and royalties earned by New Zealand residents in the Philippines. (The reduction in withholding taxes will mean that more New Zealand tax is paid in relation to those investments.)

Future Protocols

13 None anticipated.

Implementation

14 Subject to the successful completion of the international treaty examination process, the DTA will be implemented by Order in Council pursuant to section BH 1(3) of the Income Tax Act 1994.

15 This agreement will be implemented by way of an overriding treaty regulation. Section BH 1 of the Income Tax Act 1994 enables DTAs to be given effect by Order in Council. It also provides that the DTA will override the Income Tax Act 1994 and any other enactment relating to income tax, unpaid tax and the exchange of information relating to a tax. This override is necessary to give effect to the terms of the DTA and will effectively override the Income Tax Act 1994, and the Tax Administration Act 1994.

Consultation

16 The Treasury agrees with the terms of the Protocol

Withdrawal or Denunciation

17 The Second Protocol can be terminated by terminating the DTA. The DTA can be terminated by giving notice, through diplomatic channels, of termination on or before 30 June in any calendar year.

Prepared by Inland Revenue Department
November 2003

Appendix F

Second Protocol Amending the Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with Protocol, Signed at the Hague on 15 October 1980

National Interest Analysis

Date of Proposed Binding Treaty Action

The Minister of Foreign Affairs signed the *Second Protocol Amending the Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with Protocol, Signed at the Hague on 15 October 1980* (the Second Protocol) on 20 December 2001. Subject to the successful completion of the international treaty examination process, the Second Protocol will be incorporated into domestic legislation through an Order in Council. The Second Protocol will enter into force by way of an exchange of notes between New Zealand and the Netherlands, in which each party will notify the other of the completion of their constitutional requirements for giving effect to the Second Protocol in their respective domestic laws.

Reasons for New Zealand to become a party to the Treaty

2 New Zealand is party to 27 double tax agreements (DTAs), which are primarily aimed at reducing tax impediments to cross-border trade and investment, but which also help tax administrations to detect and prevent tax evasion.

3 The Second Protocol amends a DTA New Zealand has with the Netherlands that came into force in March 1981 and which is more correctly referred to as the *Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (the DTA). The DTA already stands amended by the *Protocol to the Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (the First Protocol), which came into force at the same time as the DTA itself.

4 The Second Protocol was driven primarily by the need to close down a tax avoidance opportunity in New Zealand involving the payment of cross-border insurance premiums to the Netherlands. The opportunity was also taken to make certain other amendments to the DTA to bring it up to date with current DTA and domestic policy in both countries. For instance, the method to be used by the Netherlands for relieving double taxation on certain passive income was altered to reflect Netherlands domestic law, which now adopts the “credit method” rather than the “exemption method”. (This amendment has no implications for New Zealand.) In addition, a “non-discrimination” article and an “other

income” article were also inserted into the DTA. The non-discrimination article protects nationals and residents (in certain cases) of both countries from discriminatory tax laws (if any), and needed to be inserted pursuant to a “Most Favoured Nation” obligation contained within the DTA itself. The “other income” article allocates taxing rights in respect of income that is not covered by any other specific article in the DTA, and ensures that no items of income will fall out of the DTA.

Advantages and Disadvantages to New Zealand of the Treaty Entering into Force

5 The Second Protocol will have a number of advantages. The main one is that it closes down a tax loophole involving cross-border insurance premiums. In the absence of this amendment it is possible for profits derived from New Zealand by a non-resident to be characterised as insurance premiums and distributed out of New Zealand without being subject to New Zealand tax. This provision ensures that the DTA can no longer be used to prevent New Zealand from applying its domestic law taxing provisions in such circumstances.

6 An Article dealing with “other income” is also inserted into the DTA. This article is a catch-all article which covers everything not covered by any of the other specific articles in the DTA. This article provides that any “other income” will be taxable in the country in which the recipient is resident. However, if the income arises in the other country it may be taxed in the other country up to a limit of 15% of the gross amount of the income. The advantage of this is that it provides certainty to taxpayers of both countries that no income will fall out of the DTA and be subject to unrelieved double taxation.

7 The Second Protocol also inserts a “non-discrimination” article into the DTA. The advantages of a non-discrimination article for New Zealand are that our nationals operating in the Netherlands are assured of receiving no worse tax treatment than nationals of the Netherlands in the same circumstances. Thus the Netherlands are constrained from applying any discriminatory tax laws against New Zealand nationals.

8 The Protocol does not have any disadvantages to New Zealand.

Obligations

9 Neither the Second Protocol nor the DTA itself (before or after amendment) will impose requirements on taxpayers. The DTA obliges the respective Governments to restrict their taxing rights under domestic law in certain circumstances. In other words, a DTA can only reduce tax already imposed under domestic law; it cannot itself impose tax. The Second Protocol modifies these obligations as follows:

- Article I of the Second Protocol inserts an article in the DTA dealing with “other income”. This article is a catch-all article which covers everything not covered by any of the other specific article of the DTA. It provides that any “other income” will be taxable in the country in which the recipient is resident. However, if the income arises in the other country it may also be taxed in that country up to a limit of 15% of the gross amount of the income. The imposes an obligation on New Zealand to limit its taxation of some New Zealand sourced income derived by a resident of the Netherlands (albeit very minor, given that very little income is expected to fall under this article).

- Article III of the Second Protocol inserts a non-discrimination article into the DTA. This article will prevent New Zealand from imposing discriminatory tax laws on nationals of the Netherlands operating in New Zealand, although New Zealand does not currently impose any such discriminatory tax laws and does not propose to introduce any. This article also requires New Zealand to provide no worse treatment to enterprises owned by Netherlands' residents that it applies to enterprises of any other state.
- Article IV of the Second Protocol closes down a tax loophole involving cross-border insurance premiums. This provision permits New Zealand to impose a minimum level of tax on insurance premiums paid to residents of the Netherlands (and vice versa). This new provision is consistent with the position under New Zealand domestic law. It does not create an additional obligation for New Zealand.

Economic, Social, Cultural and Environmental Effects

10 No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

Costs

11 There may be a small revenue cost associated with limiting source taxation on "other income" to 15% from Netherlands residents earning income in New Zealand. However, this revenue cost could be offset by revenue collected by "other income" earned by New Zealand residents in the Netherlands. It may also be offset by tax withheld on insurance premiums paid by New Zealand residents to the Netherlands. We do not expect that any costs will arise in relation to the non-discrimination article.

Future Protocols

12 None anticipated.

Implementation

13 Subject to the successful completion of the international treaty examination process, this DTA will be implemented by Order in Council pursuant to section BH 1(3) of the Income Tax Act 1994.

14 This agreement will be implemented by way of an overriding treaty regulation. Section BH 1 of the Income Tax Act 1994 enables DTAs to be given effect by Order in Council. It also provides that the DTA will override the Income Tax Act 1994 and any other enactment relating to income tax, unpaid tax and the exchange of information relating to a tax. This override is necessary to give effect to the terms of the DTA and will effectively override the Income Tax Act 1994 and the Tax Administration Act 1994.

Consultation

15 The Treasury agrees with the terms of the Protocol.

Withdrawal or Denunciation

16 The Second Protocol can be terminated by terminating the DTA. The DTA can be terminated by giving notice, through diplomatic channels, of termination on or before 30 June in any calendar year.

Prepared by Inland Revenue Department
November 2003

Appendix G

Convention between New Zealand and the Kingdom of the Netherlands for Mutual Assistance in the Recovery of Tax Claims

National Interest Analysis

Date of Proposed Binding Treaty Action

The Minister of Foreign Affairs signed the *Convention between New Zealand and the Kingdom of the Netherlands for Mutual Assistance in the Recovery of Tax Claims* (the Agreement) on 20 December 2001. Subject to the successful completion of the international treaty examination process, the Agreement will be incorporated into domestic legislation through an Order in Council. The Agreement will enter into force by way of an exchange of notes between New Zealand and the Netherlands, in which each party will notify the other of the completion of their constitutional requirements for giving effect to the Agreement in their respective domestic laws.

Reasons for New Zealand to become a party to the Treaty

2 In 1999, New Zealand changed its law to enable it to enter into bilateral “assistance in recovery” agreements, which provide that one country will assist the other country in the recovery of the first country’s unpaid tax. This Agreement with the Netherlands is the first assistance in recovery agreement New Zealand has entered into.

3 In the absence of this Agreement, New Zealand would have to seek judgement in its favour in the Netherlands if it were to recover a debt from a New Zealand taxpayer who went to the Netherlands with New Zealand tax outstanding. The Agreement provides that where New Zealand tax is outstanding in the Netherlands the Netherlands Revenue will recover the tax on New Zealand’s behalf as if the tax was outstanding in the Netherlands. The Agreement applies on a reciprocal basis. It allows both Governments the opportunity to recover unpaid tax more efficiently and effectively than would have been possible without the Agreement.

Advantages and Disadvantages to New Zealand of the Treaty Entering into Force

4 The advantage of entering into the Agreement is that it will provide a mechanism for the New Zealand Government to recover unpaid tax from taxpayers living in the Netherlands. This will result in the New Zealand Government being able to collect tax more effectively and efficiently than it would be able to in the absence of the Agreement.

5 A disadvantage of the Agreement is that the obligations are reciprocal in nature. In other words, the Netherlands Government is able to require the New Zealand Government to collect its unpaid tax from taxpayers in New Zealand. It can only do so if all avenues for collecting the tax available in the Netherlands have been exhausted.

6 On balance it is expected that the advantages of the Agreement will outweigh the disadvantages. The Agreement is closely related to the double tax agreement currently in place with the Netherlands and serves to further strengthen ties between the two Governments in this area.

Obligations

7 The obligations under the Agreement are for the New Zealand Government to provide assistance to the Netherlands Government in the collection of unpaid tax. It requires the New Zealand Government to undertake all the procedures for recovery of tax that it would undertake if the tax recovered were New Zealand tax.

Economic, Social, Cultural and Environmental Effects

8 No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

Costs

9 It is not possible to estimate the costs of the Agreement to New Zealand. The costs relate to the administrative costs in collecting different types of taxes in New Zealand on behalf of the Netherlands Government. It is not expected, however, that there will be a large volume of requests from the Netherlands. Moreover, the obligations are reciprocal in nature and may reduce costs of collecting tax debts owed to the New Zealand Government in respect of taxpayers resident in the Netherlands.

Future Protocols

10 None anticipated.

Implementation

11 Subject to the successful completion of the international treaty examination process, this Agreement will be implemented by Order in Council pursuant to section 173 C of the Tax Administration Act 1994.

12 The Agreement will be implemented by way of an overriding treaty regulation. Section 173 C of the Tax Administration Act 1994 enables assistance in recovery agreements to be given effect by Order in Council. It also provides that the Agreement will override the Income Tax Act 1994 and any other enactment relating to unpaid tax. This override is necessary to give effect to the terms of the Agreement and will effectively override the Income Tax Act 1994, the Tax Administration Act 1994 and the Goods and Services Tax Act 1985.

Consultation

13 The Treasury agrees with the terms of the Agreement.

Withdrawal or Denunciation

14 Article 8 provides that either contracting state may terminate the Agreement by giving notice of termination through diplomatic channels. This requires an exchange of notes

whereby one country gives notice of termination and the other country confirms receipt of the notice.

Prepared by Inland Revenue Department
November 2003