L.N. 67 of 2011

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) Order

(Made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Order comes into operation on 7 July 2011.

2. Declaration under section 49(1A)

For the purposes of section 49(1A) of the Ordinance, it is declared—

(a) that the arrangements specified in section 3(1) have been made with the Government of New Zealand with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of New Zealand; and

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

3. Arrangements specified

(1) The arrangements specified for the purposes of section 2(a) are the arrangements in—

(a) Articles 1 to 27 of the agreement titled "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income"

(which title is translated into Chinese as "《中華人民共和國香港特別行政區政府與新西蘭政府就收入稅項避免雙重課稅和防止逃稅協定》" in this Order), done in duplicate at Auckland on 1 December 2010 in the English language; and

(b) Paragraphs 1 to 4 of the protocol to the agreement, done in duplicate at Auckland on 1 December 2010 in the English language.

(2) The English text of the Articles is reproduced in Part 1 of the Schedule; a Chinese translation of the Articles is also set out in that Part.

(3) The English text of the Paragraphs is reproduced in Part 2 of the Schedule; a Chinese translation of the Paragraphs is also set out in that Part.

Schedule

[s. 3]

Part 1

Articles 1 to 27 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

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. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are:

(a) in the case of the Hong Kong Special Administrative Region:

(i) profits tax;

(ii) salaries tax; and

(iii) property tax;

whether or not charged under personal assessment;

(b) in the case of New Zealand, the income tax.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes listed in paragraph 3, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

5. Notwithstanding the provisions of paragraphs 1, 3 and 4, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting Party.

6. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "New Zealand tax", as the context requires.

Article 3

General Definitions

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

(a) (i) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply; and

(ii) 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 "business" includes the performance of professional services and of other activities of an independent character;

(c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(d) the term "competent authority" means:

(i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or an authorised representative; and

(ii) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;

(e) the terms "a Contracting Party" and "the other Contracting Party" mean the Hong Kong Special Administrative Region or New Zealand, as the context requires;

(f) the term "enterprise" applies to the carrying on of any business;

(g) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;

(i) the term "national", in relation to New Zealand, means:

(i) any individual possessing the nationality or citizenship of New Zealand; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in New Zealand;

(j) the term "person" includes an individual, a company, a trust, a partnership and any other body of persons;

(k) the term "recognised stock exchange" means:

(i) the Stock Exchange of Hong Kong Limited and any Hong Kong Special Administrative Region stock exchange recognised under the law of the Hong Kong Special Administrative Region;

(ii) the securities markets operated by the New Zealand Exchange Limited and any other New Zealand investment exchange recognised under New Zealand law; and

(iii) any other stock exchange agreed upon by the competent authorities.

2. For the purposes of Articles 10, 11 and 12, dividends, interest or royalties arising in a Contracting Party and derived by or through a trust shall be deemed to be beneficially owned by a resident of the other Contracting Party where such income is subject to tax in that other Party in the hands of a trustee of that trust.

3. As regards the application of the 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 the 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 the Hong Kong Special Administrative Region,

(i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;

(ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;

(iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(b) in the case of New Zealand, a person resident in New Zealand for the purposes of New Zealand tax;

(c) in the case of either Contracting Party, the Government of that Party and any political subdivision or local authority thereof.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then the status of the individual 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 the individual; if a permanent home is available to the individual in both Parties, the 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's centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either Party, the individual shall be deemed to be a resident only of the Party in which the individual has an habitual abode;

(c) if the individual has an habitual abode in both Parties or in neither of them, the individual shall be deemed to be a resident only of the Party in which the individual has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which the individual is a national (in the case of New Zealand);

(d) if the individual has the right of abode in the Hong Kong Special Administrative Region and is also a national of New Zealand, or if the individual does not have the right of abode in the Hong Kong Special Administrative Region and is not a national of New Zealand, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting 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

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

   (a) a place of management;

   (b) a branch;

   (c) an office;

   (d) a factory;

   (e) a workshop; and

   (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site, or a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, constitutes a permanent establishment if such site, project or activities last more than 6 months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting Party and to carry on business through that permanent establishment if for more than 183 days in any 12 month period:

(a) it carries on activities which consist of, or which are connected with, the exploration for or exploitation of natural resources, including quarries and standing timber, situated in that Party; or

(b) it operates substantial equipment in that Party.

5. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting Party performs services in the other Contracting Party:

(a) through an individual who is present in that other Party for a period or periods exceeding in the aggregate 183 days in any 12 month period, and more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other Party through that individual, or

(b) for a period or periods exceeding in the aggregate 183 days in any 12 month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other Party,

the activities carried on in that other Party in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other Party, unless these services are limited to those mentioned in paragraph 7 which, if performed through a fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of that paragraph. For the purposes of this paragraph, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or

controls the manner in which these services are performed by the individual.

6. For the purposes of determining the duration of activities under paragraphs 3 and 4, the period during which activities are carried on in a Contracting Party by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that Party by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

7. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

8. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 9 applies - is acting on behalf of an enterprise and:

(a) has, and habitually exercises, in a Contracting Party an authority to conclude contracts on behalf of the enterprise, or

(b) manufactures or processes in a Contracting Party for the enterprise goods or merchandise belonging to the enterprise,

that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 7 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

9. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided

that such persons are acting in the ordinary course of their business.

10. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture, forestry or fishing) situated in the other Contracting Party may be taxed in that other Party.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include any natural resources (including quarries), property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property, rights to explore for or exploit natural resources (including quarries) or standing timber, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit natural resources (including quarries) or standing timber; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. Any right referred to in paragraph 2 of this Article shall be regarded as situated where the property to which it relates is situated or where the exploration or exploitation may take place.

5. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such other method as may be prescribed by the laws of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such apportionment or other method; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where

(a) a resident of a Contracting Party beneficially owns (whether as a direct beneficiary of a trust or through one or more interposed trusts) a share of the profits of a business of an enterprise carried on in the other Contracting Party by the trustee of a trust other than a trust which is treated as a company for tax purposes; and

(b) in relation to that enterprise, that trustee has or would have, if it were a resident of the first-mentioned Party, a permanent establishment in the other Party,

then the business of the enterprise carried on by the trustee through such permanent establishment shall be deemed to be a business carried on in the other Party by that resident through a permanent establishment situated in that other Party and the resident's share of profits may be taxed in the other Party but only so much of them as is attributable to that permanent establishment.

8. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

9. Nothing in this Article shall affect any provisions of the laws of either Contracting Party at any time in force as they affect the taxation of any income from any form of insurance.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting Party to the extent the profits relate to transport confined solely to places in that other Party.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting Party for discharge at a place in that Party shall be treated as profits from transport confined solely to places in that Party.

Article 9

Associated Enterprises

1. Where

(a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed:

   (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends; and

   (b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting Party of which the company paying the dividends is a resident if the beneficial owner is a company that is a resident of the other Contracting Party that holds, directly or indirectly through one or more residents of either Contracting Party, shares representing 50 per cent or more of the voting power of the company paying the dividends and the company that is the beneficial owner of the dividends:

(a) has its principal class of shares listed on a recognised stock exchange specified in paragraph 1 (k)(i) or (ii) of Article 3 and regularly traded on one or more recognised stock exchanges;

(b) is owned directly or indirectly by one or more companies:

(i) whose principal class of shares is listed on a recognised stock exchange specified in paragraph 1 (k)(i) or (ii) of Article 3 and is regularly traded on one or more recognised stock exchanges; or

(ii) which, if that company or each of those companies owned directly the holding in respect of which the dividends are paid, would be entitled to equivalent benefits in respect of such dividends under a tax treaty between the Party of which that company is a resident and the Contracting Party of which the company paying the dividends is a resident; or

(c) does not meet the requirements of subparagraphs (a) or (b) of this paragraph but the competent authority of the first-mentioned Contracting Party determines that paragraph 8

of this Article does not apply. The competent authority of the first-mentioned Contracting Party shall consult the competent authority of the other Contracting Party before refusing to grant benefits of this Agreement under this subparagraph.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

4. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, dividends arising in a Contracting Party are exempt from tax in that Party, if they are paid:

(a) in the case of the Hong Kong Special Administrative Region:

(i) to the Government of the Hong Kong Special Administrative Region;

(ii) to the Hong Kong Monetary Authority;

(iii) to any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;

(b) in the case of New Zealand:

(i) to the Government of New Zealand;

(ii) to the Reserve Bank of New Zealand;

(iii) to the New Zealand Export Credit Office;

(iv) to the New Zealand Superannuation Fund;

(v) to any institution wholly or mainly owned by the Government of New Zealand as may be agreed from time to time between the competent authorities of the Contracting Parties.

5. The term "dividends" as used in this Article means income from shares and other income treated as income from shares by the laws of the Party of which the company making the distribution is a resident.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party 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 Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

8. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or the establishment, acquisition or

maintenance of the company that is the beneficial owner of the dividends or the conduct of its operations, to take advantage of this Article.

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that Party, if it is paid:

(a) in the case of the Hong Kong Special Administrative Region:

(i) to the Government of the Hong Kong Special Administrative Region;

(ii) to the Hong Kong Monetary Authority;

(iii) to any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;

(b) in the case of New Zealand:

(i) to the Government of New Zealand;

(ii) to the Reserve Bank of New Zealand;

(iii) to the New Zealand Export Credit Office;

(iv) to the New Zealand Superannuation Fund;

(v) to any institution wholly or mainly owned by the Government of New Zealand as may be agreed from time to time between the competent authorities of the Contracting Parties.

4. Notwithstanding paragraph 2, interest shall be exempted from tax by the Contracting Party where it arises if the interest is beneficially owned by a resident of the other Contracting Party that is a financial institution that is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.

5. Notwithstanding paragraph 4, interest referred to in that paragraph may be taxed in the Party in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if:

(a) in the case of interest arising in New Zealand, it is paid by a person that has not paid approved issuer levy in respect of the interest. This subparagraph (a) shall not apply if New Zealand does not have an approved issuer levy, or the payer of the interest is not eligible to elect to pay the approved issuer levy, or if the rate of the approved issuer levy payable in respect of such interest exceeds two percent

of the gross amount of the interest. For the purposes of this Article, "approved issuer levy" includes any identical or substantially similar charge payable by the payer of interest arising in New Zealand enacted after the date of this Agreement in place of approved issuer levy; or

(b) it is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income treated as income from money lent by the laws, relating to tax, of the Contracting Party in which the income arises, but does not include any income which is treated as a dividend under Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

7. The provisions of paragraphs 1, 2, 3, 4 and 5 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

8. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether the person is a resident of a Contracting Party or not, has in a Contracting Party a

permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by or deductible in determining the profits attributable to such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment is situated.

9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of the Agreement.

10. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the interest, the creation or assignment of the debt-claim or other rights in respect of which the interest is paid, or the establishment, acquisition or maintenance of the person which is the beneficial owner of the interest or the conduct of its operations, to take advantage of this Article.

Article 12

Royalties

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise, and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for:

(a) the use of, or the right to use, any copyright (including the use of or the right to use any copyright of literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, cable programmes, or typographical arrangements of published editions), patent, design or model, plan, secret formula or process, trade-mark, or other like property or right;

(b) the use of, or the right to use, any industrial, scientific or commercial equipment;

(c) knowledge or information concerning technical, industrial, commercial or scientific experience;

(d) any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c);

(e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a

Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether the person is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by or deductible in determining the profits attributable to such permanent establishment, then the royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the royalties, or with the creation or assignment of the rights in respect of which the royalties are paid, or the establishment, acquisition or maintenance of the person which is the beneficial owner of the royalties or the conduct of its operations, to take advantage of this Article.

Article 13

Alienation of Property

1. Income or gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

3. Income or gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Party.

4. Income or gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares:

   (a) quoted on a recognised stock exchange; or

   (b) alienated or exchanged in the framework of a reorganisation of a company, a merger or a similar operation; or

(c) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.

5. Nothing in this Agreement affects the application of the laws of a Contracting Party relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

(a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of assessment or income year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and

(c) the remuneration is neither borne by nor deductible in determining the profits attributable to a permanent establishment which the employer has in the other Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

Article 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting Party in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

Article 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of

Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

Article 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, lump sums paid under a mandatory provident fund scheme, and any other schemes or arrangements that may be established to replace the said scheme, shall be taxable only in the Hong Kong Special Administrative Region.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

(i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of New Zealand, is a national thereof; or

(ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. (a) Any pension (excluding a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of a Contracting Party to an individual in respect of services rendered to that Party may be taxed in that Party.

(b) Lump sums paid by, or paid out of funds created by, the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.

(c) Lump sums paid under a mandatory provident fund scheme, and any other schemes or arrangements that may be established to replace the said scheme, shall be taxable only in the Hong Kong Special Administrative Region.

(d) Notwithstanding the provisions of subparagraphs (a), (b) and (c) of this paragraph, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to payments in respect of services rendered in connection with a business carried on by a Government of a Contracting Party.

Article 19

Students

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

Article 20

Other Income

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting Party not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting Party may also be taxed in that other Party.

Article 21

Elimination of Double Taxation

1. Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), New Zealand tax paid under the laws of New Zealand and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in New Zealand, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

2. Subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), Hong Kong Special Administrative Region tax paid under the laws of the Hong Kong Special Administrative Region and consistent with the Agreement, in respect of income derived by a resident of New Zealand from sources in the Hong Kong Special Administrative Region (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

Article 22

Non-Discrimination

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of New Zealand, are New Zealand nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is New Zealand) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities in similar circumstances. This provision shall not be construed as obliging a Contracting Party to grant to individuals who are residents of the other Contracting Party any personal allowances, reliefs and reduction for tax purposes which are granted to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 9 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits

of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party in similar circumstances are or may be subjected.

5. This Article shall not apply to any provision of the laws of a Contracting Party which:

(a) is designed to prevent the avoidance or evasion of taxes;

(b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting Party under its laws;

(c) provides for consolidation of group entities for treatment as a single entity for tax purposes;

(d) provides for the transfer of losses within a group of companies;

(e) does not allow tax rebates, credits or an exemption in relation to dividends paid by a company that is a resident of that Party for purposes of its tax; or

(f) is otherwise agreed by the competent authorities of the Contracting Parties to be unaffected by this Article.

6. In this Article, provisions of the laws of a Contracting Party which are designed to prevent avoidance or evasion of taxes include:

(a) measures designed to address thin capitalisation, dividend stripping and transfer pricing;

(b) controlled foreign company and similar rules; and

(c) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures.

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic laws of those Parties, present a case to the competent authority of the Contracting Party of which that person is a resident or, if that case comes under paragraph 1 of Article 22, to that of the Contracting Party in which that person has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which that person is a national (in the case of New Zealand). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement

with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 24

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment

or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 25

Members of Government Missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

Article 26

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of the Agreement shall thereupon have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force;

(b) in New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after 1 April in the calendar year next following that in which the Agreement enters into force;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force.

Article 27

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice 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. In such event, the Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice of termination is given;

(b) in New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after 1 April in the calendar year next

following that in which the notice of termination is given;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April in the calendar year next following that in which the notice of termination is given.

(Chinese Translation)

第一條

所涵蓋的人

本協定適用於屬締約一方的居民或同時屬締約雙方的居民的人。

第二條

所涵蓋的稅項

1. 本協定適用於代締約方課徵的收入稅項，不論該等稅項以何種方式徵收。

2. 對總收入或收入的組成部分課徵的所有稅項，包括對自轉讓動產或不動產所得的收益、企業支付的工資或薪金總額以及資本增值所課徵的稅項，須視為收入稅項。

3. 以下稅項屬本協定所適用的現有稅項：

(a) 就香港特別行政區而言：

(i) 利得稅；

(ii) 薪俸稅；及

(iii) 物業稅；

不論是否按個人入息課稅徵收；

(b) 就新西蘭而言，所得稅。

4. 本協定亦適用於在本協定的簽訂日期後，在第 3 款所列的現有稅項以外課徵或為取代第 3 款所列的現有稅項而課徵的任何與該等現有稅項相同或實質上類似的稅項，以及適用於締約方將來課徵而又屬本條第 1 及 2 款所指的任何其他稅項。締約雙方的主管當局須將其稅務法律的任何重大改變，通知對方的主管當局。

5. 儘管有第 1、3 及 4 款的規定，本協定所涵蓋的稅項並不包括任何屬根據任何締約方的法律所課徵的罰款或利息的款額。

6. 現有稅項連同在本協定簽訂後課徵的稅項，以下稱為“香港特別行政區稅項”或“新西蘭稅項”，按文意所需而定。

第三條

一般定義

1. 就本協定而言，除文意另有所指外：

(a) (i) “香港特別行政區”一詞指中華人民共和國香港特別行政區的稅務法律所適用的任何地區；及

(ii) “新西蘭”一詞指新西蘭領土 (但不包括托克勞) ；它亦包括根據新西蘭法律及按照國際法獲指定為新西蘭可在其內就天然資源方面行使其主權的位於其領海以外的地區；

(b) “業務”一詞包括進行專業服務及其他具獨立性質的活動；

(c) "公司"一詞指任何法團或就稅收而言視作法團的任何實體；

(d) "主管當局"一詞：

(i) 就香港特別行政區而言，指稅務局局長或其獲授權代表；及

(ii) 就新西蘭而言，指稅務局局長或其獲授權代表；

(e) "締約方"及"另一締約方"兩詞指香港特別行政區或新西蘭，按文意所需而定；

(f) "企業"一詞適用於任何業務的經營；

(g) "締約方的企業"及"另一締約方的企業"兩詞分別指締約方的居民所經營的企業和另一締約方的居民所經營的企業；

(h) "國際運輸"一詞指由締約方的企業營運的船舶或航空器所進行的任何載運，但如該船舶或航空器只在另一締約方內的不同地點之間營運，則屬例外；

(i) "國民"一詞，就新西蘭而言，指：

(i) 擁有新西蘭國籍或公民身分的任何個人；及

(ii) 藉新西蘭的現行法律而取得法人、合夥或組織地位的任何法人、合夥或組織；

(j) "人"一詞包括個人、公司、信託、合夥及任何其他團體；

(k) "認可證券交易所"一詞指：

(i) 香港聯合交易所有限公司，以及根據香港特別行政區法律獲認可的任何香港特別行政區證券交易所；

(ii) 由新西蘭交易所有限公司營辦的證券市場，以及根據新西蘭法律獲認可的任何其他新西蘭投資交易所；及

(iii) 經締約雙方的主管當局議定的任何其他證券交易所。

2. 就第十、十一及十二條而言，凡股息、利息或特許權使用費是在某締約方產生，並由某信託或透過某信託而取得，則如該收入在該信託的受託人手中須在另一締約方課稅，則該收入須當作由該另一方的居民實益擁有。

3. 在締約方於任何時候施行本協定時，凡有任何詞語在本協定中並無界定，則除文意另有所指外，該詞語須具有它當其時根據該方就本協定適用的稅項而施行的法律所具有的涵義，而在根據該方適用的稅務法律給予該詞語的任何涵義與根據該方的其他法律給予該詞語的涵義兩者中，以前者為準。

第四條

居民

1. 就本協定而言，“締約方的居民”一詞：

(a) 就香港特別行政區而言，指，

(i) 通常居住於香港特別行政區的任何個人；

(ii) 在某課稅年度內在香港特別行政區逗留超過 180 天或在連續兩個課稅年度 (其中一個是有關的課稅年度) 內在香港特別行政區逗留超過 300 天的任何個人；

(iii) 在香港特別行政區成立為法團的公司，或在香港特別行政區以外成立為法團而通常在香港特別行政區內受管理或控制的公司；

(iv) 根據香港特別行政區的法律組成的任何其他人，或在香港特別行政區以外組成而通常在香港特別行政區內受管理或控制的任何其他人；

(b) 就新西蘭而言，指就新西蘭的稅項而言屬新西蘭居民的人；

(c) 就任何締約方而言，指該方政府及其任何政治分部或地區主管當局。

2. 如任何個人因第 1 款的規定而同時屬締約雙方的居民，則該個人的身分須按照下述規定斷定：

(a) 如該個人在其中一方有可供他使用的永久性住所，則該個人須當作只是該方的居民；如該個人在雙方均有可供他使用的永久性住所，則該個人須當作只是與其個人及經濟關係較為密切的一方 (重要利益中心) 的居民；

(b) 如無法斷定該個人在哪一方有重要利益中心，或該個人在任何一方均沒有可供他使用的永久性住所，則該個人須當作只是他的慣常居所所在的一方的居民；

(c) 如該個人在雙方均有或均沒有慣常居所，則該個人須當作只是他擁有居留權 (就香港特別行政區而言) 的一方或他屬其國民 (就新西蘭而言) 的一方的居民；

(d) 如該個人既擁有香港特別行政區的居留權亦屬新西蘭的國民，或該個人既沒有香港特別行政區的居留權亦不屬新西蘭的國民，則締約雙方的主管當局須透過共同協商解決該問題。

3. 如並非個人的人因第 1 款的規定而同時屬締約雙方的居民，則該個人須當作僅屬其實際管理工作地點所處的一方的居民。

第五條

常設機構

1. 就本協定而言，“常設機構”一詞在企業透過某固定營業場所經營全部或部分業務的情況下，指該固定營業場所。

2. “常設機構”一詞尤其包括：

(a) 管理工作地點；

(b) 分支機構；

(c) 辦事處；

(d) 工廠；

(e) 作業場所；及

(f) 礦場、油井或氣井、石礦場或任何其他開採自然資源的場所。

3. 如建築工地或建築、安裝或裝配工程，或與該建築工地或建築、安裝或裝配工程有關連的監督管理活動，持續 6 個月以上，則該工地、工程或活動即構成常設機構。

4. 如某企業於任何 12 個月的期間內有超過 183 天：

(a) 對位於某締約方的天然資源 (包括石礦及未伐的木材) 進行勘探或開發活動，或進行與該勘探或開發有關連的活動；或

(b) 在某締約方操作大型設備，

則該企業須當作在該締約方設有常設機構，並透過該常設機構經營業務。

5. 儘管有第 1、2 及 3 款的規定，凡某締約方的企業在另一締約方提供服務：

(a) 如該等服務是透過某個人提供的，而該個人在任何 12 個月的期間內逗留在該另一方一段超過 183 天的時間或累計超過 183 天的多段時間，並有超過百分之五十可歸因於該企業在上述一段或多段時間內進行的積極商業活動的總收入，是自透過該個人於該另一方所提供的服務而取得的，或

(b) 如該等服務在任何 12 個月的期間內維持了一段超過 183 天的時間或累計超過 183 天的多段時間，而該等服務是透過一名或多名身處該另一方並在該另一方提供該等服務的個人為同一項目或多個關連項目所提供的，

則除非該等服務局限於第 7 款所述的服務 (該等服務即使是透過某固定營業場所提供也不會令該固定營業場所根據該款規定成為常設機構)，否則在提供該等服務時在該另一方所進行的活動，須當作透過該企業位於該另一方的常設機構進行。就本款而言，除非代表某一企業提供服務的個人，其提供服務的方式是受到另一企業監督、指使或控制，否則該個人所提供的服務，不得視為是由該另一企業透過該個人提供的。

6. 為根據第 3 及 4 款斷定活動持續的時間，凡某企業與另一企業有相聯關係，而該企業及該另一企業均在某締約方進行活動，如兩者的活動是相聯的，則該等活動的時間須予合計，但兩間或以上的相聯企業進行同時進行的活動的時間只可計算一次。如某企業是直接或間接由另一企業控制，或兩者均直接或間接由一個或多個第三者控制，則該企業須當作是與該另一企業有相聯關係。

7. 儘管有本條以上各款的規定，“常設機構”一詞須當作不包括：

(a) 純粹為了貯存、陳列或交付屬於有關企業的貨物或商品的目的而使用設施；

(b) 純粹為了貯存、陳列或交付的目的而維持屬於有關企業的貨物或商品的存貨；

(c) 純粹為了由另一企業作加工的目的而維持屬於有關企業的貨物或商品的存貨；

(d) 純粹為了為有關企業採購貨物或商品或收集資訊的目的而維持固定營業場所；

(e) 純粹為了為有關企業進行任何其他屬準備性質或輔助性質的活動而維持固定營業場所；

(f) 純粹為了 (a) 至 (e) 段所述的活動的任何組合而維持固定營業場所，但該固定營業場所因該項組合而產生的整體活動須屬準備性質或輔助性質。

8. 儘管有第 1 及 2 款的規定，如某人 (第 9 款適用的具獨立地位的代理人除外) 代表某企業行事，並：

(a) 在某締約方擁有代表該企業訂立合約的權限，並慣常在該締約方行使該權限，或

(b) 在某締約方為該企業製造屬於該企業的貨物或商品，或對該等貨物或商品進行加工，

則該企業須當作就該人為該企業所進行的任何活動在該締約方設有常設機構；但如該人的活動局限於第 7 款所述的活動 (該等活動即使透過某固定營業場所進行也不會令該固定營業場所根據該款規定成為常設機構)，則屬例外。

9. 凡某企業透過經紀、一般佣金代理人或任何其他具獨立地位的代理人在某締約方經營業務，則只要該等人士是在其業務的通常運作中行事的，該企業不得僅因它如此經營業務而被當作在該方設有常設機構。

10. 如屬某締約方的居民的某公司，控制屬另一締約方的居民的其他公司或在該另一締約方 (不論是透過常設機構或以其他方式) 經營業務的其他公司，或受該其他公司所控制，此項事實本身並不會令上述其中一間公司成為另一間公司的常設機構。

第六條

來自不動產的收入

1. 某締約方的居民自位於另一締約方的不動產而取得的收入 (包括自農業、林業或捕魚業取得的收入)，可在該另一方徵稅。

2. “不動產”一詞具有該詞根據有關財產所處的締約方的法律而具有的涵義。該詞在任何情況下須包括：任何自然資源 (包括石礦)、附屬於不動產的財產、用於農業及林業的牲畜和設備、關於房地產的一般法律規定適用的權利、不動產的使用收益權，勘探或開發自然資源 (包括石礦) 或未伐的木材的權利，以及作為開發或有權勘探或開發自然資源 (包括石礦) 或未伐的木材的代價或就開發或有權勘探或開發自然資源 (包括石礦) 或未伐的木材而取得不固定或固定收入的權利；船舶、船艇及航空器不得視為不動產。

3. 第 1 款的規定適用於自直接使用、出租或以任何其他形式使用不動產而取得的收入。

4. 本條第 2 款提述的權利，須視為處於與其有關的財產所處的地方或處於會進行勘探或開發的地方。

5. 第 1 及 3 款的規定亦適用於來自企業的不動產的收入。

第七條

營業利潤

1. 某締約方的企業的利潤只可在該方徵稅，但如該企業透過位於另一締約方的常設機構在該另一方經營業務則除外。如該企業如前述般經營業務，其利潤可在該另一方徵稅，但以該等利潤中可歸因於該常設機構的利潤為限。

2. 在符合第 3 款的規定下，如某締約方的企業透過位於另一締約方的常設機構在該另一方經營業務，則須在每一締約方將該常設機構在某些情況下可預計獲得的利潤歸因於該機構，該等情況是指假設該常設機構是一間可區分且獨立的企業，在相同或類似的條件下從事相同或類似的活動，並在完全獨立的情況下，與首述企業進行交易。

3. 在斷定某常設機構的利潤時，為該常設機構的目的而招致的開支 (包括如此招致的行政和一般管理開支) 須容許扣除，不論該等開支是在該常設機構所處的一方或其他地方招致的。

4. 如某締約方習慣上是按照將某企業的總利潤分攤予其不同部分的基準、或按照該方的法律訂明的其他方法的基準，而斷定可歸因於有關常設機構的利潤，則第 2 款並不阻止該締約方按此分攤方法或其他方法斷定該等應課稅的利潤；但採用的方法，須令所得結果符合本條所載列的原則。

5. 不得僅因為某常設機構為有關企業採購貨物或商品，而將利潤歸因於該常設機構。

6. 就上述各款而言，除非有良好而充分的理由需要改變方法，否則每年須採用相同的方法斷定可歸因於有關常設機構的利潤。

7. 凡

(a) 某締約方的居民實益擁有 (不論作為信託的直接受益人或透過一項或多項中間信託) 由某信託 (就稅收而言視作公司的信託除外) 的受託人在另一締約方內經營的某企業的業務的一部分利潤；而

(b) 就該企業而言，該受託人在該另一方擁有常設機構或如該受託人屬首述一方的居民，該受託人會在該另一方擁有常設機構，

則由該受託人透過該常設機構所經營的該企業的業務，須被當作為該居民透過位於該另一方的常設機構在該另一方所經營的業務，而該部分屬該居民的利潤，可在該另一方徵稅 (但僅限於可歸因於該常設機構的部分)。

8. 如利潤包括在本協定其他條文另有規定的收入項目，該等條文的規定不受本條的規定影響。

9. 本條不影響任何締約方在任何時候有效的、影響對來自任何形式的保險的收入的課稅的法律規定。

第八條

航運及空運

1. 某締約方的企業自營運船舶或航空器從事國際運輸所得的利潤，只可在該方徵稅。

2. 儘管有第 1 款的規定，該等利潤中來自僅限於在另一締約方內的地方之間的運輸的部分，可在該另一方徵稅。

3. 第 1 及 2 款的規定亦適用於來自參與聯營、聯合業務或國際營運機構的利潤。

4. 就本條而言，凡在某締約方以船舶或航空器載運乘客、牲畜、郵件、貨物或商品至該方內某地方，自該等載運而取得的利潤，須視為來自僅限於在該方內的地方之間的運輸的利潤。

第九條

相聯企業

1. 凡

(a) 某締約方的企業直接或間接參與另一締約方的企業的管理、控制或資本，或

(b) 相同的人直接或間接參與某締約方的企業的和另一締約方的企業的管理、控制或資本，

而在上述任何一種情況下，該兩間企業之間在商業或財務關係上訂立或施加的條件，是有別於互相獨立的企業之間所訂立的條件的，則若非因該等條件便本應會產生而歸於其中一間企業、但因該等條件而未有產生而歸於該企業的利潤，可計算在該企業的利潤之內，並據此徵稅。

2. 凡某締約方將某些利潤計算在該方的某企業的利潤之內，並據此徵稅，而另一締約方的某企業已在該另一方就該等被計算在內的利潤課稅，如假設上述兩間企業之間訂立的條件正如互相獨立的企業之間所訂立的條件一樣，該等被計算在內的利潤是會產生而歸於首述一方的該企業的，則該另一方須就其對該等利潤徵收的稅額，作出適當的調整。在斷定上述調整時，須充分顧及本協定的其他規定，而締約雙方的主管當局在有必要的情況下須共同磋商。

第十條

股息

1. 由屬某締約方的居民的公司支付予另一締約方的居民的股息，可在該另一方徵税。

2. 然而，如支付股息的公司屬某締約方的居民，上述股息亦可在該締約方按照該方的法律徵税，但如該等股息的實益擁有人是另一締約方的居民，則：

(a) 在該實益擁有人是一間公司，而該公司直接持有支付股息的公司的表決權至少百分之十的情況下，如此徵收的税款不得超過該等股息總額的百分之五；及

(b) 在所有其他情況下，如此徵收的税款不得超過該等股息總額的百分之十五。

如某公司從利潤中支付股息，本款並不影響就該等利潤對該公司徵税。

3. 儘管有第 2 款的規定，在下述情況下，股息不得在支付股息的公司屬居民的締約方被徵税：如股息的實益擁有人是一間屬另一締約方的居民的公司，而該公司直接持有或透過一名或多名屬任何締約方的居民間接持有相當於支付股息的公司百分之五十或以上的表決權，且該作為股息的實益擁有人的公司：

(a) 其主要類別的股份是於第三條第 1(k)(i) 或 (ii) 款所指明的認可證券交易所上市，並經常於一個或多個認可證券交易所進行買賣；

(b) 直接或間接由一間或多間符合以下説明的公司擁有：

(i) 其主要類別的股份是於第三條第 1(k)(i) 或 (ii) 款所指明的認可證券交易所上市，並經常於一個或多個認可證券交易所進行買賣；或

(ii) 假若該公司或每一該等公司直接擁有有關股份 (即所支付的股息所涉及者)，則根據由該公司屬居民的一方與支付該股息的公司屬居民的另一締約方所訂立的稅收協定，該公司或每一該等公司有權就該等股息享有同等的利益；或

(c) 未能符合本款 (a) 或 (b) 段的規定，但首述締約方的主管當局決定本條第 8 款並不適用。首述締約方的主管當局須在拒絕根據本段批予利益之前先諮詢另一締約方的主管當局。

如某公司從利潤中支付股息，本款並不影響就該等利潤對該公司徵稅。

4. 儘管有本條第 2 及 3 款的規定，在某締約方產生的股息如屬支付予下列機構者，則可在該方獲豁免繳稅：

(a) 就香港特別行政區而言：

(i) 香港特別行政區政府；

(ii) 香港金融管理局；

(iii) 任何經締約雙方的主管當局不時議定的由香港特別行政區政府完全擁有或主要由香港特別行政區政府擁有的機構；

(b) 就新西蘭而言：

(i) 新西蘭政府；

(ii) 新西蘭儲備銀行；

(iii) 新西蘭出口信貸辦公室；

(iv) 新西蘭養老金基金；

(v) 任何經締約雙方的主管當局不時議定的由新西蘭政府完全擁有或主要由新西蘭政府擁有的機構。

5. “股息”一詞用於本條中時，指來自股份的收入，如作出派發的公司屬某方的居民，而按該方的法律某收入被視為來自股份的收入，則亦指該收入。

6. 凡就某股份支付的股息的實益擁有人是某締約方的居民，支付該股息的公司則是另一締約方的居民，而該擁有人在該另一締約方內透過位於該另一方的常設機構經營業務，且持有該股份是與該常設機構有實際關連的，則第 1、2、3 及 4 款的規定並不適用。在此情況下，第七條的規定適用。

7. 如某公司是某締約方的居民，並自另一締約方取得利潤或收入，則該另一方不得對該公司就某股份支付的股息徵稅 (但在有關股息是支付予該另一方的居民的範圍內，或在持有該股份是與位於該另一方的常設機構有實際關連的範圍內，則屬例外)，而即使支付的股息或未派發利潤的全部或部分，是在該另一方產生的利潤或收入，該另一方亦不得對該公司的未派發利潤徵收未派發利潤的稅項。

8. 任何與股息轉讓，或與產生或轉讓孳生股息的股份或其他權利有關的人，或與成立、收購或維持作為該股息的實益擁有人的公司或與執行其運作有關的人，如其主要目的或其中一個主要目的是利用本條，則不得根據本條獲得寬免。

第十一條

利息

1. 產生於某締約方而支付予另一締約方的居民的利息，可在該另一方徵税。

2. 然而，在某締約方產生的上述利息，亦可在該締約方按照該方的法律徵税，但如該等利息的實益擁有人是另一締約方的居民，則如此徵收的税款不得超過該等利息總額的百分之十。

3. 儘管有本條第 2 款的規定，在某締約方產生的利息如屬支付予下列機構者，則可在該方獲豁免繳税：

(a) 就香港特別行政區而言：

(i) 香港特別行政區政府；

(ii) 香港金融管理局；

(iii) 任何經締約雙方的主管當局不時議定的由香港特別行政區政府完全擁有或主要由香港特別行政區政府擁有的機構；

(b) 就新西蘭而言：

(i) 新西蘭政府；

(ii) 新西蘭儲備銀行；

(iii) 新西蘭出口信貸辦公室；

(iv) 新西蘭養老金基金；

(v) 任何經締約雙方的主管當局不時議定的由新西蘭政府完全擁有或主要由新西蘭政府擁有的機構。

4. 儘管有第 2 款的規定，在某締約方產生的利息，如為屬另一締約方的居民所實益擁有，而該居民是一間與支付人沒有關係且是完全獨立地與支付人進行交易的金融機構，則該利息須獲首述締約方豁免繳稅。就本條而言，"金融機構" 一詞指銀行或符合以下說明的其他企業：其利潤主要來自在金融市場發債融資或接受有息存款，以及將該等資金用於營運提供融資業務。

5. 儘管有第 4 款的規定，在下述情況下，該款提述的利息可在它所產生的一方被徵稅，但稅率不得超過該利息總額的百份之十：

(a) 就在新西蘭產生的利息而言，支付該利息的人未曾就該利息支付認可發行人徵費。本段在下述情況下不適用：如新西蘭並無任何認可發行人徵費，或利息的支付人並無資格選擇支付認可發行人徵費，或如就該利息須支付的認可發行人徵費的徵費率超過該利息總額的百分之二。就本條而言，"認可發行人徵費" 包括利息的支付人須就在新西蘭產生的利息支付的任何於本協定日期後制定用以取代認可發行人徵費而與該徵費相同或實質上類似的收費；或

(b) 該利息是作為一項涉及背對背貸款的安排的一部分而支付的，或是作為一項涉及在經濟上等同背對背貸款並旨在跟背對背貸款具有類似作用的其他安排的一部分而支付的。

6. "利息" 一詞用於本條中時，指來自任何類別的債權的收入 (不論該債權是否以按揭作抵押，亦不論該債權是否附有分享債務人的利潤的權利)，並尤其指來自政府證券和來自債券或債權證的收入，包括該等證券、債券或債權證所附帶的溢價及獎賞，以及所有其他被收入產生所在的締約方的稅務法律視為來自借款的收入，但不包括任何根據第十條視為股息的收入。就本條而言，逾期付款的罰款不被視作利息。

7. 凡就某項債權支付的利息的實益擁有人是某締約方的居民，並在該利息產生所在的另一締約方內，透過位於該另一方的常設機構經營業務，而該債權是與該常設機構有實際關連的，則第 1、2、3、4 及 5 款的規定並不適用。在此情況下，第七條的規定適用。

8. 如就某項債務支付利息的人是某締約方的居民，則該利息須當作是在該方產生。但如支付利息的人 (不論該人是否某締約方的居民) 在某締約方設有常設機構，而該債務是在與該機構有關連的情況下招致的，且該利息是由該機構負擔或在斷定可歸因於該機構的利潤時可予扣除的，則該利息須當作是在該機構所在的一方產生。

9. 凡因支付人與實益擁有人之間或他們兩人與某其他人之間的特殊關係，以致所支付的利息的款額，無論因何理由屬超出支付人與實益擁有人在沒有上述關係時會同意的款額，則本條的規定只適用於該會同意的款額。在此情況下，多付的部分仍須在充分顧及本協定的其他規定下，按照每一締約方的法律徵稅。

10. 任何與利息轉讓、與產生或轉讓孳生利息的債權或其他權利有關的人，或與成立、收購或維持作為該利息的實益擁有人的人或與執行其運作有關的人，如其主要目的或其中一個主要目的是利用本條，則不得根據本條獲得寬免。

第十二條

特許權使用費

1. 產生於某締約方而支付予另一締約方的居民的特許權使用費，可在該另一方徵稅。

2. 然而，在某締約方產生的上述特許權使用費亦可在該締約方按照該方的法律徵稅；但如該等特許權使用費的實益擁有人是另一締約方的居民，則如此徵收的稅款不得超過該等特許權使用費總額的百分之五。

3. “特許權使用費”一詞用於本條中時，指作為下列事項的代價而收取的任何種類的付款：

(a) 使用或有權使用任何版權 (包括使用或有權使用文學、戲劇、音樂或藝術作品、錄音、膠片、廣播、有線傳播節目、或已發表版本的排印編排的任何版權)、專利、設計或模型、圖則、秘密程式或程序、商標、或其他類似財產或權利；

(b) 使用或有權使用任何工業、科學或商業裝備；

(c) 有關技術、工業、商業或科學經驗的知識或資訊；

(d) 任何附帶於及附屬於 (a) 段所述的任何財產或權利、在 (b) 段所述的任何裝備或在 (c) 段所述的任何知識或資訊、並為使該財產或權利、裝備、知識或資訊得以應用或享用而提供的協助；

(e) 就本款所提述的任何財產或權利的使用或提供所給予的全部或部份延緩。

4. 凡就某權利或財產支付的特許權使用費的實益擁有人是某締約方的居民，並在該特許權使用費產生所在的另一締約方內，透過位於該另一方的常設機構經營業務，而該權利或財產是與該常設機構有實際關連的，則第 1 及 2 款的規定並不適用。在此情況下，第七條的規定適用。

5. 如支付特許權使用費的人是某締約方的居民，則該特許權使用費須當作是在該方產生。但如支付特許權使用費的人 (不論該人是否某締約方的居民) 在某締約方設有常設機構，而支付該特許權使用費的法律責任，是在與該機構有關連的情況下招致的，且該特許權使用費是由該機構負擔或在斷定可歸因於該機構的利潤時可予扣除的，則該特許權使用費須當作是在該機構所在的一方產生。

6. 凡因支付人與實益擁有人之間或他們兩人與某其他人之間的特殊關係，以致所支付的特許權使用費的款額，無論因何理由屬超出支付人與實益擁有人在沒有上述關係時會同意的款額，則本條的規定只適用於該會同意的款額。在此情況下，多付的部分仍須在充分顧及本協定的其他規定下，按照每一締約方的法律徵税。

7. 任何與特許權使用費轉讓，或與產生或轉讓孳生特許權使用費的權利有關的人，或與成立、收購或維持作為該特許權使用費的實益擁有人的人或與執行其運作有關的人，如其主要目的或其中一個主要目的是利用本條，則不得根據本條獲得寬免。

第十三條

財產轉讓

1. 某締約方的居民自轉讓位於另一締約方並屬第六條所提述的不動產而取得的收入或收益，可在該另一方徵税。

2. 如某動產屬某常設機構的業務財產的一部分，而該機構是某締約方的企業在另一締約方設立的，則自轉讓該動產而取得的收入或收益，包括自轉讓該機構 (單獨轉讓或隨同整個企業轉讓) 而取得的收入或收益，可在該另一方徵税。

3. 某締約方的企業自轉讓被營運從事國際運輸的船舶或航空器而取得的收入或收益，或自轉讓與上述船舶或航空器的營運有關的動產而取得的收入或收益，只可在該方徵税。

4. 如某締約方的居民自轉讓某公司的股份而取得收入或收益，而該公司超過百分之五十的資產值是直接或間接來自位於另一締約方的不動產的，則該收入或收益可在該另一方徵税。然而，本款不適用於自轉讓以下股份而取得的收益：

(a) 在認可證券交易所上市的股份；或

(b) 在一間公司重組、合併或類似行動的框架內轉讓或交換的股份；或

(c) 符合以下説明的公司的股份：該公司有超過百分之五十的資產值，是來自其經營業務所在的不動產。

5. 就締約方對自任何財產 (本條上述各款中任何一款適用之財產除外) 轉讓而取得的資本性質收益進行徵税的法律而言，本協定不影響該等法律的施行。

第十四條

來自受僱工作的入息

1. 除第十五、十七及十八條另有規定外，某締約方的居民自受僱工作而取得的薪金、工資及其他類似報酬，只可在該方徵税，但如受僱工作是在另一締約方進行則除外。如受僱工作是在另一締約方進行，則自該受僱工作而取得的報酬可在該另一方徵税。

2. 儘管有第 1 款的規定，某締約方的居民自於另一締約方進行的受僱工作而取得的報酬如符合以下條件，則只可在首述一方徵税：

(a) 收款人在於有關的課税年度或收入年度內開始或結束的任何 12 個月的期間中，在該另一方的逗留期間 (如多於一段期間則可累計) 不超過 183 天，及

(b) 該報酬由一名並非該另一方的居民的僱主支付，或由他人代該僱主支付，及

(c) 該報酬並非由該僱主在該另一方設有的常設機構所負擔，而在斷定可歸因於該機構的利潤時亦不可予扣除。

3. 儘管有本條上述各款的規定，自於某締約方的企業所營運從事國際運輸的船舶或航空器上進行受僱工作而取得的報酬，只可在該方徵税。

第十五條

董事酬金

某締約方的居民以其作為屬另一締約方的居民的公司的董事會的成員身分所取得的董事酬金及其他類似付款，可在該另一方徵税。

第十六條

演藝人員及運動員

1. 儘管有第七及十四條的規定，某締約方的居民作為演藝人員 (例如戲劇、電影、電台或電視藝人，或樂師) 或作為運動員在另一締約方以上述身分進行其個人活動所取得的收入，可在該另一方徵税。

2. 演藝人員或運動員以其演藝人員或運動員的身分在某締約方進行個人活動所取得的收入，如並非歸於該演藝人員或運動員，而是歸於另一人，則儘管有第七及十四條的規定，該收入可在該締約方徵税。

第十七條

退休金

1. 除第十八條第 2 款另有規定外，作為過往的受僱工作或過往的自僱工作的代價而支付予某締約方的居民的退休金及其他類似報酬，只可在該方徵税。

2. 儘管有第 1 款的規定，在強制性公積金計劃下以及在任何其他為取代上述計劃而設立的計劃或安排下所支付的整筆付款，只可在香港特別行政區徵税。

第十八條

政府服務

1. (a) 某締約方的政府就提供予該方的服務而向任何個人支付的薪金、工資及其他類似報酬 (退休金除外)，只可在該方徵税。

(b) 然而，如該等服務是在另一締約方提供，而該個人屬該另一方的居民，並且：

(i) 就香港特別行政區而言，擁有香港特別行政區的居留權；而就新西蘭而言，屬新西蘭的國民；或

(ii) 不是純粹為提供該等服務而成為該另一方的居民，

則該等薪金、工資及其他類似報酬只可在該另一方徵税。

2. (a) 某締約方的政府就提供予該方的服務而向任何個人支付的任何退休金 (不包括整筆付款)，或就上述服務而從該方政府所設立或供款的基金支付予任何個人的任何退休金 (不包括整筆付款)，可在該方徵税。

(b) 某締約方的政府就提供予該方的服務而向任何個人支付的整筆付款，或就上述服務而從該方政府所設立的基金支付予任何個人的整筆付款，只可在該方徵税。

(c) 在強制性公積金計劃下以及在任何其他為取代上述計劃而設立的計劃或安排下所支付的整筆付款，只可在香港特別行政區徵税。

(d) 儘管有本款 (a)、(b) 及 (c) 段的規定，如提供服務的個人屬另一締約方的居民，且有關個案屬本條第 1 款 (b) 段所述者，則相應的退休金 (不論是整筆付款或分期付款) 只可在該另一締約方徵税。

3. 第十四、十五、十六及十七條的規定，適用於就在與某締約方的政府所經營的業務有關連的情況下提供的服務而取得的款項。

第十九條

學生

如學生在緊接前往某締約方之前是或曾是另一締約方的居民，而該學生逗留在首述一方純粹是為了接受教育，則該學生為了維持其生活或教育的目的而收取的款項，如是在首述一方以外的來源產生，則不得在該方徵税。

第二十條

其他收入

1. 某締約方的居民的各項收入無論在何處產生，如在本協定位於本條之前的各條中未有規定，均只可在該方徵税。

2. 就某權利或財產支付的收入如非來自第六條第 2 款所界定的不動產的收入，而該收入的收款人是某締約方的居民，並在另一締約方內透過位於該另一方的常設機構經營業務，且該權利或財產是與該機構有實際關連的，則第 1 款的規定不適用於該收入。在此情況下，第七條的規定適用。

3. 儘管有第 1 及 2 款的規定，某締約方的居民在另一締約方產生的各項收入，如在本協定位於本條之前的各條中未有規定，則亦可在該另一方徵税。

第二十一條

消除雙重課税

1. 在不抵觸香港特別行政區的法律中關乎容許在香港特別行政區以外的管轄區繳付的税項用作抵免香港特別行政區税項的規定 (該等規定並不影響本條的一般性原則) 的情況下，如已根據新西蘭法律和按照本協定，就屬香港特別行政區居民的人自新西蘭的來源而取得收入繳付新西蘭税項，則不論是直接繳付或以扣除的方式繳付，所繳付的新西蘭税項須容許用作抵免就該收入而須繳付的香港特別行政區税項，但如此獲容許抵免的款額，不得超過按照香港特別行政區的税務法律就該收入計算所得的香港特別行政區税項的款額。

2. 在不抵觸新西蘭的法律中關乎容許在新西蘭以外的國家繳付的税項用作抵免新西蘭税項的規定 (該等規定並不影響本條的一般性原則) 的情況下，如已根據香港特別行政區法律並在與本協定相符的情況下，就新西蘭居民自香港特別行政區的來源而取得收入繳付香港特別行政區税項 (就股息而言，如股息是從利潤中支付，則不包括就該等利潤而支付的税項)，所繳付的香港特別行政區税項須容許用作抵免就該收入而須繳付的新西蘭税項。

第二十二條

反歧視條文

1. 任何人如就香港特別行政區而言享有該處的居留權或在該處成立為法團或以其他方式組成，而就新西蘭而言屬新西蘭國民，則該人在另一締約方不得受符合以下説明的任何課税或與之有關連的任何規定所規限：該課税是較在該另一方 (如該另一方是香港特別行政區) 享有該處的居留權或在該處成立為法團或以其他方式組成的人，或屬該另一方 (如該另一方是新西蘭) 的國民，在相同情況下 (尤其是在居住方面) 須接受或可接受的課税及與

之有關連的規定更為嚴苛。儘管有第一條的規定，本規定亦適用於並非締約一方或雙方的居民的人。

2. 某締約方的企業設於另一締約方的常設機構在該另一方的課稅待遇，不得遜於在類似情況下進行相同活動的該另一方的企業的課稅待遇。凡某締約方為課稅的目的授予其本身的居民任何個人免稅額、稅務寬免及扣減，本條的規定不得解釋為使該締約方有責任將該免稅額、稅務寬免及扣減授予屬另一締約方的居民的個人。

3. 除第九條第 1 款、第十一條第 9 款或第十二條第 6 款的規定適用的情況外，某締約方的企業支付予另一締約方的居民的利息、特許權使用費及其他支出，為斷定該企業的須課稅利潤的目的，須根據相同的條件而可予扣除，猶如該等款項是支付予首述一方的居民一樣。

4. 如某締約方的企業的資本的全部或部分，是由另一締約方的一名或多於一名居民直接或間接擁有或控制，則該企業在首述的締約方不得受符合以下說明的任何課稅或與之有關連的任何規定所規限：該課稅是較首述一方的其他類似企業在類似情況下須接受或可接受的課稅及與之有關連的規定更為嚴苛。

5. 本條不適用於任何締約方的符合以下說明的法律規定：

(a) 用於防止避稅或逃稅；

(b) 在根據該締約方的法律，資產轉讓的受讓者其後對有關資產的轉讓，會超出該締約方的課稅管轄範圍的前提下，不容許自該資產轉讓而產生的稅項延期支付；

(c) 就為稅務目的將實體群合併作為單一實體處理，作出規定；

(d) 就在公司集團內轉移虧損，作出規定；

(e) 為該方的稅務目的，不容許屬該方居民的公司就其支付的股息獲得退稅、抵免或豁免；或

(f) 由締約雙方的主管當局以其他形式協定不受本條影響。

6. 在本條中，締約方用於防止避稅或逃稅的法律規定包括：

(a) 用於對付稀釋資本、逃避股息稅及轉移定價的措施；

(b) 受控制的外國公司及類似規則；及

(c) 用於確保能有效地收取及討回稅款的措施 (包括保護措施)。

第二十三條

雙方協商程序

1. 如任何人認為任何締約方或締約雙方的行動導致或將導致對該人作出不符合本協定規定的課稅時，則無論該等締約方的當地法律的補救辦法如何，該人如屬某締約方的居民，可將其案件呈交該締約方的主管當局；如該案件屬第二十二條第 1 款的情況，而該人享有某締約方的居留權或在某締約方成立為法團或以其他方式組成 (就香港特別行政區而言)，或屬某締約方的國民 (就新西蘭而言)，則該人可將其案件呈交該締約方的主管當局。該案件須於就導致不符合本協定規定課稅的行動發出首次通知之時起計的三年內呈交。

2. 如有關主管當局覺得所提反對屬有理可據，而它不能獨力達致令人滿意的解決方案，它須致力與另一締約方的主管當局共同協商解決該個案，以避免不符合本協定的課稅。任何達成的協議均須予以執行，不論締約雙方的當地法律所設的時限為何。

3. 締約雙方的主管當局須致力共同協商，解決就本協定的詮釋或適用而產生的任何困難或疑問。

4. 締約雙方的主管當局可為達成以上各款所述的協議而直接 (包括透過由締約雙方的主管當局或其代表組成的聯合委員會) 與對方聯絡。

第二十四條

資料交換

1. 凡資料屬可預見攸關實施本協定的規定的資料，或可預見攸關施行或強制執行締約雙方關乎本協定所涵蓋的稅項的當地法律 (但以根據該等法律作出的課稅不違反本協定者為限) 的資料，締約雙方的主管當局須交換該等資料。該等資料交換不受第一條的規定所限制。

2. 某締約方根據第 1 款收到的任何資料均須保密處理，其方式須等同於處理根據該方的當地法律而取得的資料，該資料只可向以下人員或當局披露：與第 1 款所提述的稅項的評估或徵收、執行或檢控有關，或與關乎該等稅項的上訴的裁決有關的人員或當局 (包括法院及行政機關)。該等人員或當局只可為該等目的使用該資料。他們可在公眾法庭的法律程序中或在司法裁定中披露該資料。該資料不得為任何目的而向任何第三司法管轄區披露。

3. 在任何情況下，第 1 及 2 款的規定均不得解釋為向某締約方施加作出以下作為的責任：

(a) 實施有異於該締約方或另一締約方的法律及行政慣例的行政措施；

(b) 提供根據該締約方或另一締約方的法律或在該締約方或另一締約方的正常行政運作過程中不能獲取的資料；

(c) 提供會披露任何貿易、業務、工業、商業或專業秘密或貿易程序的資料，或提供若遭披露即屬違反公共政策的資料。

4. 如某締約方按照本條請求提供資料，則另一締約方即使未必為其本身的稅務目的而需要該資料，仍須以其收集資料措施取得所請求的資料。前述句子所載的責任，受第 3 款的限制所規限，但在任何情況下，該等限制不得解釋為容許某締約方純粹因資料無關其本土利益而拒絕提供該資料。

5. 在任何情況下，第 3 款的規定均不得解釋為容許某締約方純粹因以下理由而拒絕提供該資料：該資料是由某銀行、其他金融機構、代名人或以代理人或受信人身分行事的人所持有，或該資料關乎某人的擁有權權益。

第二十五條

政府代表團成員

本協定並不影響政府代表團 (包括領館) 成員根據國際法的一般規則或特別協定的規定享有的財政特權。

第二十六條

協定的生效

1. 每一締約方均須以書面通知另一締約方已完成其法律規定的使本協定生效的程序。本協定自上述通知的較後一份的日期起生效。

2. 本協定的條文一旦生效，隨即：

(a) 在香港特別行政區：

就香港特別行政區稅項而言，對在本協定生效的公曆年的翌年 4 月 1 日或之後開始的任何課稅年度具有效力；

(b) 在新西蘭：

(i) 就對非居民取得的收入、利潤或收益徵收的預扣稅而言，對在本協定生效的公曆年的翌年4月1日或之後支付或存入貸方帳戶的款額具有效力；

(ii) 就其他新西蘭稅項而言，對在本協定生效的公曆年的翌年4月1日或之後開始的任何入息年度具有效力。

第二十七條

終止協定

本協定維持有效，直至被任何締約方終止為止。任何締約方均可在本協定生效日期起5年屆滿後開始的任何公曆年的6月30日或之前向另一締約方發出書面終止通知，終止本協定。在該情況下，本協定：

(a) 在香港特別行政區：

就香港特別行政區稅項而言，不再對在終止通知發出的公曆年的翌年4月1日或之後開始的任何課稅年度具有效力；

(b) 在新西蘭：

(i) 就對非居民取得的收入、利潤或收益徵收的預扣稅而言，不再對在終止通知發出的公曆年的翌年4月1日或之後支付或存入貸方帳戶的款額具有效力；

(ii) 就其他新西蘭稅項而言，不再對在終止通知發出的公曆年的翌年4月1日或之後開始的任何入息年度具有效力。

Part 2

Paragraphs 1 to 4 of the Protocol to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

1. With reference to Articles 8 and 26:

   Notwithstanding the provisions of paragraph 2 of Article 26, Article 8 of the Agreement shall have effect with respect to international traffic by aircraft on the day the Agreement enters into force.

2. With reference to Articles 10 and 11:

   The competent authorities of the Contracting Parties shall only agree to institutions wholly or mainly owned by the Governments of the Contracting Parties that perform functions of a governmental nature.

3. With reference to Article 18:

   It is understood that paragraph 2(a) applies only to:

   (a) in the case of the Hong Kong Special Administrative Region, pensions and other similar remuneration paid under the Pensions Ordinance (Cap. 89) or the Pension Benefits Ordinance (Cap. 99) in respect of individuals appointed by the Government of the Hong Kong Special Administrative Region before 1 June 2000;

(b) in the case of New Zealand, pensions and other similar remuneration paid out of the Government Superannuation Fund and the National Provident Fund that have been closed to new members from 30 June 1992 and 31 March 1991 respectively.

4. With reference to Article 24:

(a) it is understood that the Article does not require the Contracting Parties to exchange information on an automatic or a spontaneous basis; and

(b) the New Zealand competent authority may disclose information to the Office of the Ombudsmen in the investigation of complaints against the administrative actions of the New Zealand Inland Revenue Department.

(Chinese Translation)

1. 就第八及二十六條而言：

儘管有第二十六條第 2 款的規定，本協定第八條由本協定生效日起對以航空器進行的國際運輸具有效力。

2. 就第十及十一條而言：

締約雙方的主管當局須僅議定由締約雙方的政府完全擁有或主要由締約雙方的政府擁有並執行屬政府性質的功能的機構。

3. 就第十八條而言：

按締約雙方理解，第 2(a) 款只適用於：

(a) 就香港特別行政區而言，於 2000 年 6 月 1 日之前受香港特別行政區政府聘用的個人根據《退休金條例》(第 89 章) 或《退休金利益條例》(第 99 章) 獲支付的退休金及其他類似報酬；

(b) 就新西蘭而言，從政府養老金基金 (於 1992 年 6 月 30 日停止接受新成員) 和國家公積金 (於 1991 年 3 月 31 日停止接受新成員) 所支付的退休金及其他類似報酬。

4. 就第二十四條而言：

(a) 按締約雙方理解，該條並不規定締約雙方須自動或自發交換資料；及

(b) 凡有就對新西蘭稅務部門的行政行動作出之投訴而進行的調查，新西蘭主管當局可向申訴專員公署披露資料。

Manda CHAN
Clerk to the Executive Council

COUNCIL CHAMBER

3 May 2011

Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of New Zealand signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 1 December 2010. This Order specifies the arrangements in Articles 1 to 27 of the Agreement and Paragraphs 1 to 4 of the Protocol as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The Agreement and Protocol were signed in English. The Chinese texts set out in the Schedule are translations.

2. The effects of the declaration are—

(a) that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) despite anything in any enactment; and

(b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of New Zealand, have effect in relation to any tax of New Zealand that is the subject of that provision.