

AUSTRALIA/MEXICO

Copyright 2006 Tax Analysts, Worldwide Tax Treaties
Australia, **Mexico**

2002 Income Tax Agreement and Final Protocol

PUBLICATION-DATE: September 9, 2002

EFFECTIVE-DATE: December 31, 2003; Income subject to withholding tax, from January 1, **2004**; other provisions, from July 1, **2004**. See Article 27.

STATUS: In Force

Doc 2002-20726

2002 Income Tax Agreement and Final Protocol

TEXT:

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Australia and the Government of the United Mexican States, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which shall hereafter be referred to as the "Agreement",

Have agreed as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

1 The existing taxes to which this Agreement shall apply are:

(a) in **Mexico**:

the federal income tax (el impuesto sobre la renta federal);

(b) in Australia:

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

2 This Agreement shall apply also to any identical or substantially similar taxes which are imposed under the federal laws of **Mexico** and Australia after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in the laws of their respective States relating to the taxes to which this Agreement applies, and to its application, within a reasonable period of time after those changes.

Article 3

General Definitions

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

(a) the term "**Mexico**" means the United Mexican States; when used in a geographical sense, it includes the territory of the United Mexican States: being the integrated parts of the Federation; the islands, including the reefs and cays in the adjacent waters; the island of Guadalupe and Revillagigedo; the continental shelf and the seabed and submarine shelves of the islands, cays and reefs, where **Mexico** may exercise sovereign rights in accordance with international law; the waters of the territorial seas to the extent and limits established by international law and the inland waters; and the airspace of the national territory to the extent and upon the conditions established by international law; and the exclusive economic zone outside the territorial sea within which **Mexico** may exercise sovereign rights in accordance with its domestic law and international law;

(b) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

(c) the term "Mexican tax" means the tax imposed by **Mexico**, being the tax to which this Agreement applies by virtue of Article 2;

(d) the term "Australian tax" means the taxes imposed by Australia, being the taxes to which this Agreement applies by virtue of Article 2;

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

(f) the term "competent authority" means:

(i) in the case of **Mexico**, the Ministry of Finance and Public Credit;

(ii) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;

(g) the terms "a Contracting State" and "the other Contracting State" mean **Mexico** or Australia, as the context requires;

(h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

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

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

(k) the term "tax" means Mexican tax or Australian tax, as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax.

2 As regards the application of this Agreement at any time by a Contracting State, any term not defined herein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 Resident

1 For the purposes of this Agreement, a person is a resident of a Contracting State if the person is a resident of that Contracting State for the purposes of its tax.

2 A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

3 A person, who in relation to any income, is a partnership, an estate of a deceased individual, or a trust (other than a partnership, an estate of a deceased individual, or a trust the income of which is exempt from taxation under the law of a Contracting State relating to its tax) shall not be treated as a resident of a Contracting State except to the extent that the income is subject to tax in that State as the income of a resident of that State, either in the hands of that person or in the hands of a partner or beneficiary, or, if that income is exempt from tax in that State, it is so exempt solely because it is subject to tax in the other State.

4 Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then the status of the person shall be determined in accordance with the following rules:

(a) the person shall be deemed to be a resident only of the Contracting State in which a permanent home is available to the person;

(b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident only of the Contracting State with which the person's economic and personal relations are closer. For the purpose of this subparagraph, an individual's citizenship or nationality of one of the Contracting States shall be a factor in determining the degree of the individual's personal and economic relations with that Contracting State.

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

Article 5 Permanent Establishment

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

2 The term "permanent establishment" includes:

(a) a place of management;

(b) a branch;

(c) an office;

- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (g) an agricultural, pastoral or forestry property.

3 An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it has a building site or construction or installation project in that State, or a supervisory or consultancy activity connected therewith, which lasts more than 6 months.

4 An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:

- (a) heavy equipment is being used in that State by, for or under contract with the enterprise; or
- (b) a person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

5 An enterprise shall not be deemed to have a permanent establishment merely by reason of:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; or
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; or
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information, or scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise; or
- (f) the maintenance in **Mexico** of a representative office of a bank where the activities of the representative office are limited by the law of **Mexico** to activities which are of a preparatory or auxiliary nature.

6 A person acting in a Contracting State on behalf of an enterprise of the other Contracting State-other than an agent of an independent status to whom paragraph 7 applies-shall be deemed to be a permanent establishment of that enterprise in the firstmentioned State if the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, 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 5 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.

7 An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that other State 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 and that in their commercial or financial relations with the enterprise, conditions are not made or imposed that differ from those generally agreed to by independent agents.

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

9 The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 6 of Article 11 and paragraph 6 of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in a Contracting State.

Article 6

Income From Immovable (Real) Property

1 Income from immovable (real) property may be taxed in the Contracting State in which the immovable (real) property is situated.

2 In this Article, the term "immovable (real) property":

(a) in the case of **Mexico**, means immovable property and has the meaning which it has under the law of **Mexico**, and shall also include:

(i) property accessory to immovable property;

(ii) livestock and equipment used in agriculture and forestry;

(iii) rights to which the provisions of general law respecting landed property apply;

(iv) usufruct of immovable property; and

(v) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

(b) in the case of Australia, means real property according to the law of Australia, and shall also include:

(i) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and

(ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

3 Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

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

5 The provisions of paragraphs 1, 3 and 4 shall also apply to income from immovable (real) property of an enterprise and to income from immovable (real) property used for the performance of independent personal services.

Article 7

Business Profits

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

(a) that permanent establishment; or

(b) sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment. However, the profits derived from the sales described in this subparagraph (b) shall not be taxable in the other State if the enterprise demonstrates that such sales have been carried out for reasons other than obtaining a benefit under this Agreement.

2 Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated in that other State, there shall in each Contracting State be attributed to that permanent establishment the profits which it might reasonably 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 or with other enterprises with which it deals.

3 In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere. No such deductions shall be allowed in respect of such amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, by way of commission, for specific services performed or for management, or, except in the case of a bank, by way of interest on money lent to the permanent establishment.

4 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.

5 Where profits include items of income or gains 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.

6 Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate. For the purposes of the application of this paragraph, an insurance enterprise of Australia shall, except in regard to reinsurance, be deemed to have a permanent establishment in **Mexico** if it collects premiums in **Mexico** or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 of Article 5 applies.

Article 8 Ships and Aircraft

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

2 Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other State.

3 The profits to which the provisions of paragraphs 1 and 2 apply include profits from the operation of ships or aircraft derived through participation in a pool service or other profit sharing arrangement.

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 State and are discharged at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

Article 9 Associated Enterprises

1 Where:

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

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

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which would operate or which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, have accrued or might have been expected to accrue 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, by virtue of the provisions of paragraph 1 of this Article or Item (4) of the Protocol, a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued or which might be expected to have accrued to the enterprise of the firstmentioned State if the conditions made between the two enterprises had been those which would have operated or which might be expected to have operated between independent enterprises dealing wholly independently with one another, then that other State shall, in accordance with the provisions of Article 24, make an appropriate adjustment to the amount of tax charged in that State on those profits if it agrees with the adjustment made by the firstmentioned Contracting State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3 The provisions of paragraph 2 shall not apply in the case of fraud.

Article 10

Dividends

1 Dividends paid by a company which is a resident of a Contracting State, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed only in that other State.

2 However, those dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed:

(a) nil per cent of the gross amount of so much of the dividends as are paid out of profits that have borne the normal rate of company tax, if the person beneficially entitled to those dividends is a company (other than a partnership) 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 to the extent to which those dividends are not within paragraph (a), provided that if the relevant law in either Contracting State at the date of signature of this Agreement is varied otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

3 For the purposes of paragraph 2, profits have borne the normal rate of company tax:

(a) in **Mexico**, to the extent to which the dividends have been paid from the net profit account; and

(b) in Australia, to the extent to which the dividends have been "franked" in accordance with its law relating to tax.

4 The provisions of paragraph 1 and paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5 The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, of the Contracting State of which the company making the distribution is a resident.

6 The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7 Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company-being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled-except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on 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 State.

Article 11 Interest

1 Interest arising in a Contracting State, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2 However, that interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the interest:

(i) if the person beneficially entitled is a bank or an insurance company; or

(ii) if derived from bonds and securities that are regularly and substantially traded on a recognized securities market; or

(iii) paid by banks except where subparagraphs (i) or (ii) apply; or

(iv) paid by the purchaser to the seller of machinery and equipment in connection with a sale on credit; and

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

3 Notwithstanding the provisions of paragraph 2, interest derived from the investment of official foreign exchange reserve assets by the Government of one of the Contracting States, its monetary institutions or a bank performing central banking functions in that State shall be exempt from tax in the other Contracting State.

4 The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any other form of indebtedness and all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises.

5 The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then the interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7 Where, by reason of a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid exceeds, for whatever reason, the amount which would or might have been expected to have been agreed upon by the payer and the person so entitled in the absence of that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

8 The provisions of this Article shall not apply if the indebtedness in respect of which the interest is paid was created or assigned with the main purpose of taking advantage of this Article and not for bona fide commercial reasons. In that case the provisions of the domestic law of the Contracting State in which the interest arises shall apply.

Article 12 Royalties

1 Royalties arising in a Contracting State, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2 However, those royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3 The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right; or

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

(c) the supply of scientific, technical, industrial or commercial knowledge or information; or

(d) the supply of 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); or

(e) the use of, or the right to use:

(i) motion picture films; or

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

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

4 The term "royalties" also includes income, profits or gains derived from the sale, exchange or other disposition of any property or right described in this paragraph to the extent to which the amounts realised on such sale, exchange or other disposition are contingent on the productivity, use or further disposition of such property or right.

5 The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the property or right in respect of which the royalties are paid or credited is

effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6 Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7 Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, the amount of the royalties paid or credited exceeds, for whatever reason, the amount which would or might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

8 The provisions of this Article shall not apply if the rights or property in respect of which the royalties are paid or credited were created or assigned with the main purpose of taking advantage of this Article and not for bona fide commercial reasons. In that case the provisions of the domestic law of the Contracting State in which the royalties arise shall apply.

Article 13

Alienation of Property

1 Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable (real) property situated in the other Contracting State may be taxed in that other State.

2 Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership, trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to real property situated in the other Contracting State, may be taxed in that other State.

3 Income, profits or gains from the alienation of property, other than immovable (real) property, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the firstmentioned State for the purpose of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

4 Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or property other than immovable (real) property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the enterprise alienating those ships, aircraft or property is a resident.

5 Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property (including shares or other rights of a company) other than that to which any of the preceding paragraphs of this Article apply.

6 In this Article, the term "immovable (real) property" has the same meaning as it has in paragraph 2 of Article 6.

7 The situation of immovable (real) property shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

8 An individual who elects, under the taxation law of a Contracting State, to defer taxation on income or gains relating to property which would otherwise be taxed in that State upon the individual ceasing to be a resident of that State for the purposes of its tax, shall, if the individual is a resident of the other Contracting State, be taxable on income or gains from the subsequent alienation of that property only in that other Contracting State.

Article 14

Independent Personal Services

1 Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, if that individual:

(a) has a fixed base regularly available in the other Contracting State for the purpose of performing those activities; or

(b) is present in the other State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year or in the year of income concerned, as the case may be of that other State,

the income may be taxed in that other State, but only so much of the income as is attributable to services performed from that fixed base or in that other State during such period or periods.

2 The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1 Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other State.

2 Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the firstmentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year or in the year of income concerned, as the case may be; and

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

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

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 State may be taxed in that State.

Article 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that persons capacity as a member of the board of directors and, in the case of **Mexico**, in that persons capacity as an "administrador" or a "comisario", of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Entertainers and Sportspersons

1 Notwithstanding the provisions of Articles 7, 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians) and sportspersons from their personal activities as such may be taxed

in the Contracting State in which these activities are exercised. Income referred to in this paragraph shall include income derived from any personal activities performed in the other Contracting State by such persons relating to their reputation as entertainers or sportspersons.

2 Where income in respect of the personal activities of an entertainer or a sportsperson as such accrues not to that entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 18 Pensions and Annuities

1 Pensions (including government pensions) and annuities paid to a resident of a Contracting State shall be taxable only in that State.

2 The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3 Any alimony or other like maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the firstmentioned State.

Article 19 Government Service

1 Salaries, wages and other similar remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision or local authority of that State to an individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

(a) is a citizen or national of that State; or

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

2 The provisions of paragraph 1 shall not apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof. In that case the provisions of Articles 15 or 16, as the case may be, shall apply.

Article 20 Students

Payments which a student who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the firstmentioned State solely for the purpose of the student's education, shall be exempt from tax in the firstmentioned State on payments made to the student by persons residing outside that firstmentioned State for the purposes of the student's maintenance or education.

Article 21 Other Income

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

2 The provisions of paragraph 1 shall not apply to income, other than income from immovable (real) property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 22

Source of Income

1 Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to be income from sources in that other Contracting State.

2 Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, may be taxed in the other Contracting State shall for the purposes of Article 23 and of the law of the firstmentioned State relating to its tax be deemed to be income from sources in the other Contracting State.

Article 23

Methods of Elimination of Double Taxation

1 In accordance with the provisions and subject to the limitations of the laws of **Mexico**, as may be amended from time to time without changing the general principle hereof, **Mexico** shall allow its residents as a credit against Mexican tax:

(a) Australian tax paid on income arising in Australia, in an amount not exceeding the tax payable in **Mexico** on such income; and

(b) in the case of a company owning at least 10 per cent of the capital of a company which is a resident of Australia and from which the firstmentioned company receives dividends, Australian tax paid by the distributing company with respect to the profits out of which the dividends are paid.

2 Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article):

(a) Mexican tax paid under the law of **Mexico** and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in **Mexico** shall be allowed as a credit against Australian tax payable in respect of that income; and

(b) where a company which is a resident of **Mexico** and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the firstmentioned company, the credit referred to in subparagraph (a) shall include the Mexican tax paid by that firstmentioned company in respect of that portion of its profits out of which the dividend is paid.

Article 24

Mutual Agreement Procedure

1 Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Agreement, the person may, irrespective of the remedies provided by the domestic law of those States concerning taxes to which this Agreement applies, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with this Agreement.

2 The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement, provided that in the case of **Mexico** the

competent authority is notified of the case within four and a half years from the due date or the date of filing the return in **Mexico**, whichever is later. The solution so reached shall be implemented:

(a) in the case of **Mexico**, within ten years from the due date or the date of filing of the return in **Mexico**, whichever is later, or a longer period if permitted under the domestic law of **Mexico**;

(b) in the case of Australia, notwithstanding any time limits in the law relating to its tax.

3 The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together regarding cases not provided for in this Agreement.

4 The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

5 For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

Article 25

Exchange of Information

1 The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic law of the Contracting States concerning taxes to which this Agreement applies insofar as the taxation under that law is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State 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 to which this Agreement applies. 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.

2 In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation to:

(a) carry out administrative measures at variance with the law or the administrative practice of that or of the other Contracting State; or

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

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

Article 26

Members of Diplomatic Missions and Consular Posts

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

Article 27

Entry Into Force

Both Contracting States shall notify each other in writing through the diplomatic channel of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and thereupon this Agreement shall have effect:

(a) in respect of taxes imposed in accordance with Articles 10 (Dividends), 11 (Interest), and 12 (Royalties), for amounts paid or credited on or after the first day of the second month next following the date on which this Agreement enters into force if the Agreement enters into force prior to 1 July of that year; otherwise, on 1 January of the year following the year this Agreement enters into force.

(b) in respect of other taxes:

(i) in **Mexico**, on or after 1 July in the calendar year next following that in which this Agreement enters into force;

(ii) in Australia, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which this Agreement enters into force.

Article 28 Termination

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) in **Mexico**:

on or after 1 July in the calendar year next following that in which the notice is given;

(b) in Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 July in the calendar year next following that in which the notice of termination is given;

(ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at **Mexico** City this 9th day of September 2002, in the Spanish and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

FOR THE GOVERNMENT OF AUSTRALIA:

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Australia and the Government of the United Mexican States,

Having regard to the Agreement between the Government of Australia and the Government of the United Mexican States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed today at (in this Protocol called "the Agreement"),

Have agreed as follows:

(1) With reference to paragraph 1 of Article 4,

The term "resident" also includes a Contracting State or a political subdivision or local authority thereof.

(2) With reference to Article 7,

It is understood that income or profits attributable to a permanent establishment during its existence will be taxed in the Contracting State in which the permanent establishment is situated even if the payments are deferred until the permanent establishment has ceased to exist.

It is further understood that where:

(a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and

(b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.

It is further understood that nothing in Article 7 shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that state is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

(3) With reference to paragraph 1 of Article 8,

Profits referred to in paragraph 1 shall not include profits from the provision of accommodation or transportation other than from the operation of ships or aircraft in international traffic.

(4) With reference to Article 9,

It is understood that nothing in Article 9 shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

(5) With reference to paragraph 2 of Article 10,

It is understood that nothing in this paragraph affects the rate of tax that applies to the company paying the dividends in the Contracting State of which the company is a resident by reason of distribution of such dividends.

(6) With reference to paragraph 5 of Article 10,

It is understood that an issue of bonus shares is included in the term "dividends".

(7) With reference to paragraph 2 of Article 11,

(a) The term "recognized securities market" means:

(i) in the case of **Mexico**, stock exchanges duly authorized under the terms of the Stock Market Law (Ley del Mercado de Valores) of 2 January, 1975;

(ii) in the case of Australia, a stock exchange authorized under the laws of Australia; and

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

(b) The provisions of this paragraph shall not apply to interest derived from back-to-back loans. In such case, the interest shall be taxable in accordance with the domestic law of the State in which it arises.

(8) With reference to paragraph 6 of Article 11 and paragraph 5 of Article 12,

It is understood that where a loan has been contracted by an enterprise of a Contracting State and a part only of that loan is attributed to a permanent establishment or fixed base of that enterprise in the other Contracting State, or where a contract under which royalties are paid has been concluded by the enterprise and a part only of such contract is attributed to such permanent establishment or fixed base, then only that part of the loan or contract is to be considered as an indebtedness or a contract connected with that permanent establishment or fixed base.

(9) With reference to Article 12,

It is understood that the definition of "royalties" includes payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:

(i) satellite; or

(ii) cable, optic fibre or similar technology; and

(b) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:

(i) satellite; or

(ii) cable, optic fibre or similar technology; and

(c) the use of, or the right to use, some or all of the part of the spectrum specified in a spectrum licence.

(10) With reference to Article 14,

Article 14 shall also apply to income derived by a company which is a resident of Australia from the furnishing of personal services through a fixed base in **Mexico** in accordance with subparagraph (a) of paragraph 1. In that case, the company may compute the tax on the income from such services on a net basis as if that income were attributable to a permanent establishment in **Mexico**.

(11) In general,

(a) It is understood that the asset tax imposed by **Mexico** shall not be applied to residents of Australia that are not subject to tax under Articles 5 and 7 of the Agreement, except for assets referred to in paragraphs 3 and 4 of Article 12 that are furnished by such residents to a resident of **Mexico**. In the case of assets referred to in paragraphs 3 and 4 of Article 12, **Mexico** shall grant a credit against the tax on such assets in an amount equal to the income tax that would have been imposed under the Mexican Income Tax Law on the royalties paid instead of the rate provided in Article 12.

(b) If, in an Agreement for the avoidance of double taxation that may subsequently be made between Australia and a third State, there is included a Non-discrimination Article, Australia shall immediately inform **Mexico** in writing through the diplomatic channel and shall enter into negotiations with **Mexico** in order to provide the same treatment for **Mexico** as may be provided for the third State.

(c) If, an Agreement for the avoidance of double taxation that may subsequently be made between Australia and a third State, establishes that the Exchange of Information Article may be used for purposes of value added taxes imposed by the Contracting States, such clause automatically shall apply for the purposes of the Agreement.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments have signed this Protocol.

Done in duplicate at **Mexico** City this 9th day of September 2002, in the Spanish and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA:

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

NEW ZEALAND/SOUTH AFRICA

Copyright 2006 Tax Analysts, Worldwide Tax Treaties
New Zealand, **South Africa**

2002 Income Tax Agreement and Final Protocol

PUBLICATION-DATE: February 6, 2002

EFFECTIVE-DATE: July 23, **2004**; In New Zealand: income subject to withholding tax, from September 1, **2004**; other provisions, from April 1, 2005. In **South Africa**: income subject to withholding tax, from September 1, **2004**; other provisions, from January 1, 2005. See Article 26.

STATUS: In Force

Doc 2002-4312

2002 Income Tax Agreement and Final Protocol

TEXT:
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

Preamble

The Government of New Zealand and the Government of the Republic of **South Africa** desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1
Persons Covered

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

Article 2
Taxes Covered

1. The existing taxes to which this Agreement shall apply are:

(a) in New Zealand:

the income tax;

(hereinafter referred to as "New Zealand tax");

(b) in **South Africa**:

(i) the normal tax;

(ii) the secondary tax on companies; and

(iii) the withholding tax on royalties;

(hereinafter referred to as "South African tax").

2. 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. The competent authorities of the Contracting States shall notify each other within a reasonable period of time of any significant changes that have been made in their taxation laws.

3. Notwithstanding the provisions of paragraphs 1 and 2, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

Article 3 General Definitions

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

(a) (i) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;

(ii) the term " **South Africa** " means the Republic of **South Africa** and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of **South Africa** and in accordance with international law, as an area within which **South Africa** may exercise sovereign rights or jurisdiction;

(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 New Zealand, the Commissioner of Inland Revenue or an authorised representative;

(ii) in the case of **South Africa**, the Commissioner for the South African Revenue Service or an authorised representative;

(e) the terms "a Contracting State" and "the other Contracting State" mean New Zealand or **South Africa**, as the context requires;

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

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

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

(i) the term "national" means:

(a) in the case of New Zealand, any individual who is a citizen of New Zealand;

(b) in the case of **South Africa**:

(i) any individual who is a national of **South Africa**;

(ii) any legal person or association deriving its status as such from the laws in force in **South Africa**;

(j) the term "natural resources" includes standing timber and fish;

(k) the term "person" includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.

2. For the purposes of Articles 10, 11 and 12, a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of those dividends, interest or royalties.

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

Article 4 Resident

1. For the purposes of this Agreement, the term "resident" means any person who is a resident of a Contracting State for the purposes of that State's tax. The term also includes a Contracting State and any political subdivision or local authority of that State. The term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

(a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States or a permanent home is not available in either State, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if sole residence cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;

(c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;

(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States 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 States, then it shall be deemed to be a resident solely of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

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

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 or exploitation of natural resources.

3. A building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, constitutes a permanent establishment only if such site, project or activity continues for a period of more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if for more than six months:

(a) it carries on activities that consist of, or that are connected with, the exploration for or exploitation of natural resources situated in that State; or

(b) substantial equipment is being used in that State by, for or under contract with the enterprise.

5. The term "permanent establishment" likewise encompasses:

(a) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of income or year of assessment concerned;

(b) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of income or year of assessment concerned.

6. For the purposes of determining the duration of activities under paragraphs 3, 4 and 5, the period during which activities are carried on in a Contracting State 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 State 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 has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State 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 State merely because it carries on business in that State 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 State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (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 State from immovable property (including income from agriculture, forestry or fishing) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include any natural resources, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property, rights to explore for or exploit natural resources, 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. Ships 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 shall be regarded as situated where the immovable property, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State 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 State 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 State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State 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 State in which the permanent establishment is situated or elsewhere. However, no deduction is allowable in respect of expenses which are not deductible under the laws of the Contracting State in which the permanent establishment is situated.

4. 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.

5. 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.

6. Where:

(a) a resident of a Contracting State beneficially owns, whether directly or through one or more interposed trusts, a share of the business profits of an enterprise carried on in the other Contracting State 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 would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of the business profits shall be attributed to that permanent establishment.

7. Where profits include items of income or gains 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.

8. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of the Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

Article 8

Operation of Ships and Aircraft

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

2. Notwithstanding the provisions of paragraph 1, such profits may also be taxed in the other Contracting State where they are profits from the operation of ships or aircraft confined solely to places in that other State.

3. For the purposes of this Article, profits from the operation of ships or aircraft shall include:

(a) profits derived from the rental on a bare boat basis of ships or aircraft;

(b) profits derived from the use or rental of containers;

if such profits are incidental to the operation of ships or aircraft.

4. The provisions of paragraphs 1 and 2 shall also apply to the share of the profits from the operation of ships or aircraft derived by an enterprise of a Contracting State through participation in a pool service, in a joint business or operating organisation or in an international operating agency.

5. 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 State for discharge at a place in that State shall be treated as profits from the operation of ships or aircraft confined solely to places in that State.

Article 9
Associated Enterprises

1. Where

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

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

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 State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which might reasonably have been expected to have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which might reasonably have been expected to have been made between independent enterprises dealing wholly independently with one another, then that other State may 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 States shall if necessary consult each other.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State for the purposes of its tax, being dividends which are beneficially owned by a resident of the other Contracting State, may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the laws of that State, but the tax so charged shall not exceed:

(a) in the case of New Zealand, 15 per cent of the gross amount of the dividends;

(b) in the case of **South Africa**:

(i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying the dividends; or

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

The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

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

3. The term "dividends" as used in this Article means income from shares and other income treated as income from shares by the laws, relating to tax, of the Contracting State of which the company making the payment is a resident for the purposes of its tax.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein 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.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, 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 State. This paragraph shall not apply in relation to dividends paid by any company which is a resident of both States for the purposes of each State's tax.

Article 11 Interest

1. Interest arising in a Contracting State, being interest which is beneficially owned by a resident of the other Contracting State, may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest derived by the Government of a Contracting State, or by a bank performing central banking functions in a Contracting State, shall be exempt from tax in the other Contracting State.

4. 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 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 State 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.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State 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.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the debt-claim on which the interest is paid was incurred, and such interest is deductible in determining the income, profits or gains attributable to that permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. 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, having regard to the debt-claim for which it is paid, exceeds 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 State, due regard being had to the other provisions of this Agreement.

Article 12 Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State, may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright (including the use of or the right to use any 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; or

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

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

(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); or

(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 State, carries on business in the other Contracting State 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 State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are deductible in determining the income, profits or gains attributable to that permanent establishment, then such royalties shall be deemed to arise in the State 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, having regard to the use, right or information for which they are paid, exceeds 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 State, due regard being had to the other provisions of this Agreement.

Article 13

Alienation of Property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable property as defined in paragraph 2 of Article 6 situated in the other Contracting State may be taxed in that other State.

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

3. Income, profits or gains of an enterprise of a Contracting State 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 State.

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership or trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to immovable property situated in the other Contracting State, may be taxed in that other State.

5. Nothing in this Agreement affects the application of the laws of a Contracting State 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 State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of income or year of assessment of that other State; and

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

(c) the remuneration is not deductible in determining the taxable profits of a permanent establishment which the employer has in the other State.

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 State may be taxed in that State.

Article 15 Directors Fees

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

Article 16 Entertainers and Sportspersons

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

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that persons 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 State in which the activities of the entertainer or sportsperson are exercised.

Article 17 Pensions and Annuities

1. Subject to paragraph 2 of Article 18, pensions and annuities paid to a resident of a Contracting State shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or moneys worth.

Article 18
Government Service

1. Salaries, wages and other similar remuneration (other than pensions) paid by the Government of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Government or a political subdivision or a local authority thereof shall be exempt from tax in the other Contracting State if the individual is not resident in that other State for the purposes of that other States tax or is resident in that other State for the purposes of that other States tax solely for the purpose of rendering those services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall also be taxable in the other Contracting State if the individual is a resident of that State.

3. The provisions of Articles 14, 15 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19
Students

A student who is temporarily present in a Contracting State solely for the purpose of the students education and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from sources outside that first-mentioned State for the purposes of the students maintenance or education.

Article 20
Other Income

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the preceding Articles of this Agreement shall be taxable only in that State unless that income is derived from sources within the other Contracting State, in which case that income may also be taxed in that other State.

Article 21
Elimination of Double Taxation

1. Subject to the provisions of the laws of New Zealand from time to time in force which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), South African tax paid under the laws of **South Africa** and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in **South Africa** (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.

2. In **South Africa**, subject to the provisions of the law of **South Africa** regarding the deduction from tax payable in **South Africa** of tax payable in any country other than **South Africa**, New Zealand tax paid by residents of **South Africa** in respect of income taxable in New Zealand, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

Article 22
Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to

which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on a permanent establishment which an enterprise of a third State has in that other State.

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

4. The provisions of this Article shall not be construed as obliging a Contracting State to grant to a resident of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. This Article shall not apply to any provisions of the taxation laws of a Contracting State which:

(a) are reasonably designed to prevent or defeat the avoidance or evasion of taxes; or

(b) are in force on the date of signature of this Agreement, or are substantially similar in general purpose or intent to any such provision but are enacted after the date of signature of this Agreement, provided that any such provision (except where that provision is in an international agreement) does not allow for different treatment of residents of the other Contracting State as compared with the treatment of residents of any third State.

6. Nothing contained in this Article shall prevent **South Africa** from imposing on the profits attributable to a permanent establishment in **South Africa** of a company, which is a resident of New Zealand, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

7. If a Contracting State considers that taxation measures of the other Contracting State infringe the principles set forth in this Article, the competent authorities shall consult each other in an endeavour to resolve the matter.

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States 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 law of those States, present a case to the competent authority of the Contracting State of which the person is a resident. 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 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 State, 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 law of the Contracting States.

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

Article 24

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States insofar as the taxation thereunder is not contrary to the Agreement. The exchange of

information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State 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 the first sentence. 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.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

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

(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 State;

(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.

Article 25

Members of Diplomatic Missions and Consular Posts

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

Article 26

Entry Into Force

This Agreement shall enter into force on the last date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give the Agreement the force of law in New Zealand and in **South Africa**, as the case may be, and, in that event, the Agreement shall have effect:

(a) 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 the first day of the second month next following the date on which the Agreement enters into force;

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

(b) in **South Africa**:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force; and

(ii) with regard to other taxes, in respect of years of assessment beginning on or after the first day of January next following the date upon which the Agreement enters into force.

Article 27

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through the diplomatic channel, by giving 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 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 the first day of the second month 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;

(b) in **South Africa**:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given; and

(ii) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Pretoria this 6th day of February 2002 in the English language.

FOR THE GOVERNMENT OF NEW ZEALAND:

FOR THE GOVERNMENT OF THE REPUBLIC OF **SOUTH AFRICA**:

PROTOCOL

The Government of New Zealand and the Government of the Republic of **South Africa**

Have agreed at the signing of the Agreement between the Governments of the two Contracting States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income upon the following provision which shall form an integral part of the Agreement:

If, in an agreement for the avoidance of double taxation that may subsequently be concluded between **South Africa** and a third State, the rate at which **South Africa** may impose the secondary tax on companies is limited, **South Africa** shall immediately inform the Government of New Zealand in writing through the diplomatic channel and shall enter into negotiations with the Government of New Zealand with a view to providing comparable treatment for New Zealand as may be provided for the third State.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Pretoria this 6th day of February 2002 in the English language.

FOR THE GOVERNMENT OF NEW ZEALAND:

FOR THE GOVERNMENT OF THE REPUBLIC OF **SOUTH AFRICA**: