2010/115

Double Tax Agreements (Singapore) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 10th day of May 2010

Present:
His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Schedule 3

Agreement between the Government of New Zealand and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

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Order

1 Title

This order is the Double Tax Agreements (Singapore) Order 2010.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Commencement of agreement

The agreement and protocol set out in the Schedule come into force on the date referred to in Article 25(1) of the agreement as the date on which the agreement enters into force.

4 Purposes

The arrangements specified in the agreement and protocol set out in the Schedule have been negotiated with Singapore for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.

5 Arrangements to have effect

The arrangements specified in the agreement and protocol set out in the Schedule have effect according to the agreement and protocol.

6 Revocation

The Double Taxation Relief (Singapore) Order 1973 (SR 1973/256) is revoked on the date referred to in Article 25(1) of the agreement set out in the Schedule as the date on which the agreement enters into force.

7 Transitional provision

Despite clause 6, the Double Taxation Relief (Singapore) Order 1973 continues to apply in New Zealand to any tax that is covered by the agreement set out in the Schedule until, in respect of that tax, the agreement comes into effect in accordance with Article 25(1)(a) of the agreement.

Schedule

cls 3–7

Agreement between the Government of New Zealand and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

The Government of New Zealand and the Government of the Republic of Singapore,

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 the Agreement shall apply are:
   (a) In New Zealand: the income tax
   (hereinafter referred to as "New Zealand tax");
   (b) In Singapore: the income tax
   (hereinafter referred to as "Singapore tax").
2. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signa-

Article 2—*continued*

ture 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.

Article 3
General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
   - (a) the term "person" includes an individual, a company and any other body of persons;
   - (b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
   - (c) the term "enterprise" applies to the carrying on of any business;
   - (d) 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;
   - (e) 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 between places in the other Contracting State;
   - (f) 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 Singapore, the Minister for Finance or an authorised representative;
   - (g) the term "national", in relation to a Contracting State, means:
     - (i) any individual possessing the nationality or citizenship of that Contracting State; and

Article 3—*continued*

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

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

(i) the terms "a Contracting State" and "the other Contracting State" mean New Zealand or Singapore as the context requires;

(j) the term "statutory body" means a body constituted by statute and performing only non-commercial functions which would otherwise be performed by the Government of a Contracting State;

(k) the term "recognised Stock Exchange" means:

(i) in the case of New Zealand, the securities markets operated by the New Zealand Exchange Limited;

(ii) in the case of Singapore, the securities market operated by the Singapore Exchange Limited, Singapore Exchange Securities Trading Limited and the Central Depository (Pte) Limited; and

(iii) any other stock exchange located in a Contracting State that is agreed upon by the competent authorities of the Contracting States;

(l) (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 designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;

(ii) the term "Singapore" means the Republic of Singapore and when used in a geographical sense, the term "Singapore" includes the territorial waters of Singapore and any area extending

Article 3—*continued*

beyond the limits of the territorial waters of Singapore, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Singapore and in accordance with international law as an area over which Singapore has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living.

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 that interest or those dividends 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 of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision, local authority or statutory body thereof.

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

   (a) the individual shall be deemed to be a resident only 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, the individual shall be deemed to be a resident only of the State with which the in-

Article 4—*continued*

dividual's personal and economic relations are closer (centre of vital interests);

(b) if the State in which the individual's centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to be a resident only 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 only of the State of which the individual is a national;

(d) in any other case, 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 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 especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop, and

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

3. A building site, or a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, constitutes a permanent establishment if it lasts more than 12 months.

Article 5—*continued*

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) (i) it carries on activities which consist of, or which are connected with, the exploration or exploitation of natural resources, including standing timber, situated in that State; or

(ii) the enterprise operates substantial equipment in that State;

but only where the activities continue or the substantial equipment is operated within the State for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the year of income concerned; or

(b) it furnishes services (including consultancy and independent personal services), but only where activities of that nature continue within the State for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the year of income concerned.

5. For the purposes of determining the duration of activities under paragraphs 3 and 4, the period during which activities are carried on in a Contracting 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.

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

Article 5—*continued*

(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 sub-paragraphs (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.

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

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

(b) manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to 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 6 and are, in relation to that enterprise, of a preparatory or auxiliary character.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on

Article 5—*continued*

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.

9. 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 law 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 landed property apply, usufruct of immovable property, rights to explore for or exploit natural resources or standing timber, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit natural resources or standing timber; 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. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7
Business profits

1. The profits of an enterprise of a Contracting 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.
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

Article 7—*continued*

(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.

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

8. Notwithstanding the provisions of this Article, an enterprise of a Contracting State that derives income or profits from any form of insurance, other than life insurance, from the other Contracting State in the form of premiums paid for the insurance of risks situated in that other State, may to that extent be taxed in the other State in accordance with the law of that other State relating specifically to the taxation of any person who derives such income or profits. However, the amount of the income or profits that may be taxed in that Contracting State shall not exceed 10 per cent of the gross premiums receivable, except where the income or profits so derived are attributable to a permanent establishment of an enterprise of the first-mentioned State, in which case the other provisions of this Article shall apply.

Article 8
Shipping and air transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic 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 the profits relate to transport confined solely to places in that other State.

Article 8—*continued*

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

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include:
   (a) profits from the rental on a bareboat basis of ships or aircraft; and
   (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers), used for the transport of goods or merchandise;

   where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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 transport 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.

Article 9—*continued*

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 would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
   (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 per cent of the voting power of the company paying the dividends;
   (b) 15 per cent of the gross amount of the dividends in all other cases.

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term "dividends" as used in this Article means income from shares and other income treated as income from shares by the laws of the State of which the company making the distribution is a resident.

Article 10—*continued*

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.

6. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

Article 11
Interest

1. Interest arising in a Contracting State and paid to 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,

Article 11—*continued*

but if the beneficial owner of the interest is a resident of the other Contracting State, 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 arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State.

4. For the purpose of paragraph 3, the term "Government":

(a) in the case of New Zealand, means the Government of New Zealand and shall include:

(i) the Reserve Bank of New Zealand;

(ii) the New Zealand Export Credit Office;

(iii) the New Zealand Superannuation Fund;

(iv) a statutory body; and

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

(b) in the case of Singapore, means the Government of Singapore and shall include:

(i) the Monetary Authority of Singapore;

(ii) the Government of Singapore Investment Corporation Pte Ltd;

(iii) a statutory body; and

(iv) any institution wholly or mainly owned by the Government of Singapore as may be agreed from time to time between the competent authorities of the Contracting States.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income treated as income from money lent by the laws, relating to tax, of the Contracting State in which

Article 11—*continued*

the income arises, but does not include any income which is treated as a dividend under Article 10.

6. The provisions of paragraphs 1, 2 and 3 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.

7. 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 indebtedness on which the interest is paid was incurred, and such interest is borne by or 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.

8. 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 paid to 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

Article 12—*continued*

State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind, 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, artistic, or scientific works, sound recordings, films, broadcasts, cable programmes, typographical arrangements of published editions or computer software), 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, scientific or commercial equipment; or
   (c) knowledge or 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 person who is a resident of that State. Where, however, the person paying the royalties, whether the person

Article 12—*continued*

is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by or deductible in determining the income, profits or gains attributable to that permanent establishment, then the 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.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the royalties, or with the creation or assignment of the rights in respect of which the royalties are paid or credited, to take advantage of this Article by means of that creation or assignment. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

Article 13
Alienation of property

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

2. 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 such gains from the alienation of such a

Article 13—*continued*

permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains 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 the Contracting State in which the enterprise alienating such ships, aircraft or other property is a resident.

4. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares traded on a recognised Stock Exchange, deriving more than 50 per cent of their value directly or indirectly from 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 concerned, and

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

Article 14—*continued*

(c) the remuneration is not borne by or 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 shall be taxable only in that State. However, if the remuneration is derived by a resident of the other Contracting State, it may also be taxed in that other State.

Article 15
Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's 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 person's 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 person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a Contracting State by an entertainer or a sportsperson if the visit to that State is wholly or mainly supported by public funds of one or both of the Con-

Article 16—*continued*

tracting States or political subdivisions or local authorities or statutory bodies thereof. In such case, the income shall be taxable only in the Contracting State in which the entertainer or the sportsperson is a resident.

Article 17
Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Pensions and other payments made under the social security legislation of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.

Article 18
Government service

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or subdivision or authority or body shall be taxable only in that State.
   (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
      (i) is a national of that State; or
      (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Notwithstanding the provisions of paragraph 1, any pensions and other similar remuneration paid by, or out of funds created by, one of the Contracting States or a political subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or subdivision or authority or body may be taxed in that State.

Article 18—*continued*

(b) However, such pensions and other similar remuneration shall be taxable only in the Contracting State of which the individual is a resident if the individual is a national of that State.

3. The provisions of Articles 14, 15, 16, and 17 shall apply to salaries, wages, and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority or a statutory body thereof.

Article 19
Students

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

Article 20
Other income

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 except that if such income is derived from sources within the other Contracting State, that income may also be taxed in that other State.

Article 21
Elimination of double taxation

1. Subject to any provisions of the laws of New Zealand which may from time to time be in force which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general

Article 21—*continued*

principle of this Article), Singapore tax paid under the laws of Singapore and consistent with this Agreement, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in Singapore (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. Subject to any provisions of the laws of Singapore which may from time to time be in force and which relate to the allowance of a credit against Singapore tax of tax paid in a country outside Singapore (which shall not affect the general principles hereof), New Zealand tax paid under the law of New Zealand and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a Singapore resident from sources in New Zealand (excluding, in the case of a dividend, tax paid in respect of profits out of which the dividend is paid) shall be allowed as a credit against Singapore tax payable in respect of that income. However, where such income is a dividend paid by a company which is a New Zealand resident to a company which is a Singapore resident and which beneficially owns at least 10% of the paid-up share capital in the first-mentioned company the credit shall take into account (in addition to any New Zealand tax on dividends) the New Zealand tax paid by the first-mentioned company in respect of its profits.

3. For the purposes of paragraph 1 of this Article, a New Zealand resident deriving income from sources in Singapore consisting of—

(a) profits, being profits in respect of which an exemption from Singapore tax has been granted under the provisions of the Economic Expansion Incentives (Relief from Income Tax) Act, (Chapter 86) of Singapore; or

(b) interest or royalties, being interest or royalties in respect of which an exemption from or reduction of Singapore tax has been granted under the provisions of the said Economic Expansion Incentives (Relief from Income Tax) Act, (Chapter 86)—

Article 21—*continued*

shall be deemed to have paid Singapore tax in an amount or, as the case may be, the Singapore tax paid shall be deemed to have been increased by an amount equal to the amount by which the Singapore tax that otherwise would have been payable under the law of Singapore and in accordance with this Agreement in respect of those profits or, as the case may be, that interest or those royalties is reduced by the exemption or reduction granted.

4. Every reference in paragraph 3 to the Economic Expansion Incentives (Relief from Income Tax) Act, (Chapter 86) shall be deemed to include a reference to any other law which is imposed in Singapore after the date of signature of this Agreement in modification of, or in addition to, or in substitution for, that Act and which is agreed, in an Exchange of Letters between the Contracting States, to be of a substantially similar character to the provisions of that Act as in force at the date of signature of this Agreement.

5. Notwithstanding paragraph 3, a New Zealand resident deriving income from Singapore, being income referred to in that paragraph, shall not be deemed to have paid Singapore tax in respect of such income where the competent authority of New Zealand considers, after consultation with the competent authority of Singapore, that it is inappropriate to do so having regard to:

(a) whether any prearrangements have been entered into by any person for the purpose of taking advantage of paragraph 3 for the benefit of that person or any other person;

(b) whether any benefit accrues or may accrue to a person who is neither a New Zealand resident nor a Singapore resident;

(c) the prevention of fraud or the avoidance of the taxes to which the Agreement applies;

(d) any other matter which the competent authorities consider relevant in the particular circumstances of the case including any submissions from the New Zealand resident concerned.

Article 21—*continued*

6. The provisions of paragraph 3 shall apply for the first 10 years for which the Agreement is effective.

Article 22
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 if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting 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.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 23
Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of

Article 23—*continued*

every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.

3. In no case shall the provisions of paragraphs 1 and 2 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 (ordre public).

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

Article 23—*continued*

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

Article 24
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 25
Entry into force

1. 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 Singapore, 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 Singapore:

   in respect of tax chargeable for any year of assessment beginning on or after 1 January in the second calendar

Article 25—*continued*

year following the year in which the Agreement enters into force.

2. The *Agreement between the Government of New Zealand and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*, with Protocol, signed on 21st August 1973 as amended by a Second Protocol signed on 1st July 1993 and a Third Protocol signed on 5th September 2005 shall terminate and cease to have effect in relation to any tax in respect of which this Agreement comes into effect in accordance with paragraph 1. To the extent that the first-mentioned Agreement applies to taxes not covered by this Agreement, the first-mentioned Agreement as it relates to such taxes shall also terminate and cease to have effect from the date of entry into force of this Agreement.

3. Notwithstanding paragraph 1 of this Article, if, on the date that Singapore notifies New Zealand that the last of such things has been done as is necessary to give the Agreement force of law in Singapore in accordance with paragraph 1 of this Article, Singapore has not completed its domestic legislative requirements necessary for entry into force of Article 23, such circumstances shall be recorded in Singapore's notification under paragraph 1 of this Article and Article 23 shall not enter into force for Singapore.

4. If the circumstances described in paragraph 3 of this Article prevail, Singapore shall notify New Zealand when it has completed its domestic legislative requirements necessary for entry into force of Article 23. Article 23 shall enter into force for Singapore 30 days after the date of such notification.

5. Notwithstanding paragraph 2 of this Article, if the circumstances described in paragraphs 3 and 4 of this Article prevail, Singapore shall continue to be bound by its obligations under Article 21 (Exchange of Information) of the *Agreement between the Government of New Zealand and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*, with Protocol, signed on 21st August 1973

Article 25—*continued*

as amended by a Second Protocol signed on 1st July 1993 and a Third Protocol signed on 5th September 2005 until such time as Article 23 of the Agreement enters into force for Singapore in accordance with paragraph 4 of this Article.

Article 26
Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, 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 Singapore:

in respect of tax chargeable for any year of assessment beginning on or after 1 January in the second calendar year following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Singapore this 21st day of August 2009 in the English language.

For the Government of New Zealand:	For the Government of the Republic of Singapore:
Martin Harvey	Moses Lee
High Commissioner	Commissioner of Inland Revenue

Protocol

The Government of New Zealand and the Government of the Republic of Singapore have agreed that the following provisions shall form an integral part of the Agreement:

Article I

With reference to Article 2 of the Agreement:

It is understood that 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 II

With reference to Article 5 of the Agreement:

It is understood that profits attributable, if any, to a permanent establishment existing under paragraph 7 will be determined in accordance with Article 7 of the Agreement.

Article III

With reference to Article 6 of the Agreement:

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

Article IV

With reference to Article 8 of the Agreement:

It is understood that the interpretation in the Commentary to Article 8 of the OECD Model Tax Convention on Income and on Capital as it read on 17 July 2008 shall apply in relation to interest. In particular it is understood that interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from such operations where the investment that generates that interest is made as an integral part of the carrying on of the business of the operation of ships or aircraft in international traffic.

Article V

With reference to Article 11 of the Agreement:

Protocol—*continued*
Article V—*continued*

Penalty charges for late payment for trade credits shall not be regarded as interest for the purpose of this Article.

Article VI

With reference to Articles 10, 11 and 12 of the Agreement:

If, in an agreement for the avoidance of double taxation that is made, after the date of signature of this Agreement, between New Zealand and a third State, New Zealand agrees to limit the rate of tax:

(a) on dividends paid by a company which is a resident of New Zealand for the purposes of New Zealand tax to which a company that is a resident of the third State, or the third State or a political subdivision or a local authority or a statutory body or institution thereof is entitled, to a rate less than that provided in paragraph (2) of Article 10; or

(b) on interest arising in New Zealand to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 11; or

(c) on royalties arising in New Zealand to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 12,

the Government of New Zealand shall immediately inform the Government of the Republic of Singapore in writing through the diplomatic channel and shall enter into negotiations with the Government of the Republic of Singapore to review the relevant provisions in order to provide the same treatment for Singapore as that provided for the third State.

It is understood that paragraph 6 of Article 10 and paragraph 7 of Article 12 shall not apply to a bona fide arrangement motivated by sound business reasons.

IN WITNESS WHEREOF the undersigned, duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Singapore this 21st day of August 2009 in the English language.

For the Government of New Zealand:	For the Government of the Republic of Singapore:
Martin Harvey	Moses Lee
High Commissioner	Commissioner of Inland Revenue

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force 28 days after its notification in the *Gazette*, gives effect to the agreement between New Zealand and Singapore signed on 21 August 2009 (the **2009 agreement**). The 2009 agreement relates to double taxation with respect to income tax and the prevention of fiscal evasion and provides for the exchange of information between the parties for the purpose of administering and enforcing domestic law relating to taxes. The 2009 agreement replaces the previous double tax agreement with Singapore that was given effect under the Double Taxation Relief (Singapore) Order 1973.

The 2009 agreement comes into force after the parties exchange diplomatic notes confirming that domestic procedures for bringing the agreement into force have been completed, as required by *Article 25*. Under that article, the previous double tax agreement with Singapore will cease to have effect when the 2009 agreement comes into effect. This order revokes the Double Taxation Relief (Singapore) Order 1973, but provides that it will continue to apply to any tax that is covered by the 2009 agreement until, in respect of that tax, the 2009 agreement comes into effect.

The date on which the 2009 agreement comes into force will be publicised on: http://www.taxpolicy.ird.govt.nz/tax-treaties/singapore.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 13 May 2010.
This order is administered by the Inland Revenue Department.

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2010