



Double Tax Agreements (Dominica) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 8th day of June 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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Order

- 1 Title**
This order is the Double Tax Agreements (Dominica) 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 set out in the Schedule comes into force on the date referred to in Article 13 of the agreement as the date on which the agreement enters into force.
- 4 Purposes**
The arrangements specified in the agreement set out in the Schedule have been negotiated with Dominica 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 set out in the Schedule have effect according to the agreement.

Schedule

cls 3, 4, 5

Agreement between the Government of New Zealand and the Government of the Commonwealth of Dominica on the exchange of information with respect to taxes and tax matters

Whereas the Government of New Zealand and the Government of the Commonwealth of Dominica (“the Contracting Parties”) recognise the need for co-operation and the exchange of information with respect to taxes and tax matters;

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes and tax matters;

NOW therefore, the Contracting Parties desiring to conclude an Agreement in order to facilitate the exchange of information with respect to taxes and tax matters have agreed as follows:

Article 1

Object and scope of this agreement

1. The Contracting Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the respective laws of the Contracting Parties concerning taxes and tax matters covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.
2. The rights and safeguards secured to persons by the laws or administrative practice of either Contracting Party remain applicable. The Requested Party shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

Article 2

Jurisdiction

1. To enable this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party without regard to whether the person to whom the information relates is, or whether the information requested is in possession or control of, a resident or national of a Contracting Party.
2. A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3

Taxes covered

1. The existing taxes which are the subject of this Agreement are taxes of every kind and description imposed by the laws of the Contracting Parties at the date of signature of this Agreement.
2. This Agreement shall also apply to any identical taxes imposed by either Contracting Party after the date of signature of this Agreement in addition to or in place of the existing taxes.
3. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes if the competent authorities of the Contracting Parties so determine.
4. This Agreement shall also apply to other taxes as may be determined in an exchange of letters through the diplomatic channel between the Contracting Parties.
5. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.
6. This Agreement shall not apply to taxes imposed by municipalities, local authorities, or possessions of a Contracting Party.

Article 4

Definitions

1. In this Agreement, unless otherwise defined:
 - (a) the term “New Zealand” means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
 - (b) the term “Commonwealth of Dominica” means the island of Dominica including the territorial waters thereof, the sea-bed, its subsoil and their natural resources, and any other area in the sea and in the air within which the Commonwealth of Dominica in ac-

Article 4—*continued*

- cordance with international law, exercises sovereign rights or its jurisdiction;
- (c) the term “Requesting Party” means the Contracting Party requesting information or having received information from the Requested Party;
 - (d) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form.
 - (e) the term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
 - (f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (g) the term “competent authority” means:
 - (i) in respect of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner, and;
 - (ii) in respect of the Commonwealth of Dominica, the Minister of Finance or the Minister’s authorised representative;
 - (h) the term “Contracting Party” means New Zealand or the Commonwealth of Dominica as the context requires;
 - (i) the term “information” means any fact, statement, document or record in any form whatever;
 - (j) the term “information gathering measures” means laws, regulations, and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
 - (k) the term “person” includes an individual, a company and any other body of persons;

Article 4—*continued*

- (l) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - (m) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
 - (n) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - (o) the term “Requested Party” means the Contracting Party that has been requested to provide information or that has provided information in response to a request from a Requesting Party;
 - (p) the term “tax” means any tax to which this Agreement applies pursuant to Article 3; and
 - (q) the term “national” means:
 - (i) in respect of the Commonwealth of Dominica, any citizen and any legal person, partnership, company, trust estate, association, or any other entity deriving its status as such from laws in force in the Commonwealth of Dominica.
 - (ii) in respect of New Zealand, any individual possessing the nationality or citizenship of New Zealand and any legal person, partnership or association deriving its status as such from the laws in force in New Zealand.
2. Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 5

Exchange of information upon request

1. The competent authority of the Requested Party shall provide upon request in writing by the competent authority of the Requesting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the Requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the territorial jurisdiction of Requested Party.
2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, the Requested Party shall use, at its own discretion, all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request:
 - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - (b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain;
 - (i) in the case of trusts, information on settlors, trustees, beneficiaries and protectors;
 - (ii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and

Article 5—*continued*

- (iii) in the case of entities that are neither trusts nor foundations, equivalent information to the information in subparagraphs (i) and (ii) of this paragraph.
5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting Parties to obtain or provide:
- (a) ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties;
 - (b) information which exceeds a legally required time period for retaining that information in the jurisdiction of the Requested Party and where that information is in fact no longer kept;
 - (c) information in the possession or control of a person other than the taxpayer that does not relate to the taxpayer;
 - (d) information that the Requested Party was not required to maintain prior to the effective date of this Agreement and is not available at the time of the request.
6. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:
- (a) the identity of the person under examination or investigation;
 - (b) the period for which the information is sought;
 - (c) the nature of the information sought and the form in which the Requesting Party wishes to receive the requested information from the Requested Party;
 - (d) the tax purpose for which the information is sought;
 - (e) the reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the tax laws of the Requesting Party with

Article 5—*continued*

- respect to the person identified in subparagraph (a) of this paragraph;
- (f) the grounds for believing that the information requested is held or is in the possession or control of a person within the territorial jurisdiction of the Requested Party;
 - (g) to the extent known, the name and address of any person believed to be in possession or control of the requested information;
 - (h) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Party, and that if the requested information was within the jurisdiction of the Requesting Party then the competent authority of the Requesting Party would be able to obtain the information under the laws of the Requesting Party or in the normal course of administrative practice; and
 - (i) a statement that the Requesting Party has pursued all means available in its own territory to obtain the requested information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall confirm the receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of any deficiencies in the request, within 60 days of the receipt of the request.
7. If the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, or if it encounters obstacles in furnishing the information or if it refuses to furnish the information, it shall immediately inform in writing the Requesting Party, explaining the reasons for its inability to obtain and provide the requested information, the obstacles encountered, or the reasons for its refusal.

Article 6

Tax examinations abroad

1. The Requested Party may, to the extent permitted under its laws, and following reasonable notice from the Requested Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the written consent of the persons concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the meeting with the persons concerned.
2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its laws, allow representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.
3. If the request referred to in paragraph 2 of this Article is granted, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party of the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Requested Party conducting the examination in accordance with its laws.

Article 7

Possibility of declining a request

1. The competent authority of the Requested Party may decline a request for information where:
 - (a) the request is not made in conformity with this Agreement;
 - (b) the Requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulties; or

Article 7—*continued*

- (c) the disclosure of the information requested would be contrary to its national security or public policy.
2. The Requested Party shall not be required to obtain or provide information that the Requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws or in response to a valid request made in similar circumstances from the Requested Party under this Agreement.
 3. This Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
 4. This Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor, barrister, or other admitted legal representative where such communications are:
 - (a) produced for the purposes of seeking or providing legal advice; or
 - (b) produced for the purposes of use in existing or contemplated legal proceedings.
 5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.
 6. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

Article 8 Confidentiality

1. All information received by a Contracting Party under this Agreement shall be kept confidential.
2. Such information may be disclosed only to persons or authorities (including judicial and administrative authorities) in the jurisdiction of the Contracting Party concerned with the purposes specified in Article 1 of this Agreement and shall only be used by such persons or authorities for such purposes. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
3. Information provided to a Requesting Party under this Agreement shall not be disclosed to any other person or entity or authority or any other jurisdiction.

Article 9 Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the Requesting Party. At the request of either Contracting Party, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the Requested Party shall consult with the competent authority of the Requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 10 Implementation legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 11

No prejudicial or restrictive measures

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party so long as this Agreement is in force and effective.
2. For the purposes of this Article, “prejudicial or restrictive measure based on harmful tax practices” means a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of paragraph 2 the term “prejudicial or restrictive measure” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.
4. A “prejudicial or restrictive measure” does not include generally applicable measures, applied by either Contracting Party, such as controlled foreign companies, foreign investment funds, transferor trusts, Transfer Pricing, Thin Capitalisation, operation of the relief from double taxation provisions or general information reporting rules that relate to the disclosure of information from other countries or jurisdictions, or transactions with such countries or jurisdictions, such as record keeping requirements imposed on foreign owned subsidiaries to ensure access to information concerning parent companies.

Article 12

Mutual agreement procedure

1. The competent authorities of the Contracting Parties shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5, 6 and 9.

Article 12—*continued*

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.
4. The Contracting Parties may also determine to use other forms of dispute resolution should this become necessary.

Article 13

Entry into force

1. The Government of New Zealand and the Government of the Commonwealth of Dominica shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the bringing into force of this Agreement.
2. This Agreement shall enter into force on the date of the last notification, and shall thereupon have effect for taxable periods beginning on or after 1 January following entry into force or, where there is no taxable period, for all charges to tax arising on or after 1 January following entry into force.
3. This Agreement shall apply to information predating the coming into force of this Agreement, provided the requested information relates to a taxable period or chargeable event following the effective date of this Agreement.

Article 14

Termination

1. This Agreement shall continue in effect indefinitely, but either of the Contracting Parties may terminate this Agreement by giving written notice of termination to the other Contracting Party through the diplomatic channel. Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of notice of termination by the other Contracting Party.
2. Notwithstanding any termination of this Agreement, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

DONE at Washington DC, this 16th day of March, 2010, in duplicate in the English language.

For the Government
of New Zealand:

Roy Ferguson
Ambassador of New Zealand

For the Government
of the Commonwealth
of Dominica:

J A Rolle
Charge d' Affaires, of
Commonwealth of Dominica

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 on the 28th day after the date of its notification in the *Gazette*, gives effect to an agreement between New Zealand and Dominica on the exchange of information with respect to taxes and tax matters.

The agreement comes into force on the date of the last notification by the parties that domestic procedures for bringing the agreement into force have been completed.

Once it has entered into force, the agreement has effect in relation to the exchange of information relating to taxes despite anything in the Income Tax Act 2007, any other Inland Revenue Act, the Official Information Act 1982, or the Privacy Act 1993.

**Double Tax Agreements (Dominica)
Order 2010**

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 10 June 2010.

This order is administered by the Inland Revenue Department.
