



INCOME TAX ACT 1970

INCOME TAX (NEW ZEALAND) (DOUBLE TAXATION) ORDER 2009

Approved by Tynwald 21 October 2009
Coming into operation 23 October 2009

The Council of Ministers makes this Order under section 54(1) to (1C) of the Income Tax Act 1970¹.

1 Title

The title of this Order is the Income Tax (New Zealand) (Double Taxation) Order 2009.

2 Commencement

If approved by Tynwald², this Order comes into operation on 23 October 2009.

3 Interpretation

In this Order “applicable arrangements” means the arrangements for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments contained in an agreement between the Government and the Government of New Zealand, signed in London on 27 July 2009 and set out in the Schedule.

4 Implementation of the agreement

It is declared that-

- a) the applicable arrangements have been made with the Government of New Zealand for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments; and

¹ XXI p. 260 (section 54 was amended by section 10 of the Income Tax Act 2009 C.2.)

² As required by section 54(1G) of the Income Tax Act 1970

- b) it is expedient that those arrangements have effect under section 54 of the Income Tax Act 1970.

MADE 27th August 09

Mary Williams
Chief Secretary

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE ISLE OF MAN
AND
THE GOVERNMENT OF NEW ZEALAND
FOR
THE ALLOCATION OF TAXING RIGHTS WITH RESPECT TO
CERTAIN INCOME OF INDIVIDUALS
AND
TO ESTABLISH A MUTUAL AGREEMENT PROCEDURE IN
RESPECT OF TRANSFER PRICING ADJUSTMENTS**

The Government of the Isle of Man and the Government of New Zealand
("the Parties"),

Recognising that the Parties have concluded an Agreement on the Exchange of
Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect
to certain income of individuals and to establish a mutual agreement procedure in respect
of transfer pricing adjustments,

Have agreed as follows:

ARTICLE 1
PERSONS COVERED

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

ARTICLE 2
TAXES COVERED

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

(a) In the Isle of Man, taxes on Income or profits;

(hereinafter referred to as "Manx tax");

(b) In New Zealand, the income tax;

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

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Party.

ARTICLE 3

DEFINITIONS

- 1 For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term "competent authority" means In the case of the Isle of Man, the Assessor of Income Tax or an authorised delegate and, In the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
 - (b) the term "Isle of Man" means the Island of the Isle of Man;
 - (c) the term "Party" means the Isle of Man or New Zealand, as the context requires;
 - (d) the term "national", in relation to a Party, means any individual possessing the nationality or citizenship of that Party;
 - (e) 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;
 - (f) the term "person" includes an individual, a company and any other body of persons;
 - (g) the term "tax" means Marx tax or New Zealand tax, as the context requires;
and
 - (h) the term "transfer pricing adjustment" means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

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

ARTICLE 4

RESIDENT

- 1 For the purposes of this Agreement, the term "resident of a Party" means:
 - (a) In the case of the Isle of Man, a person who is a resident for the purposes of Manx tax; and
 - (b) In the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax.

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

- 3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual's personal and economic relations are closer (centre of vital interests);
 - (b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party of which the individual is a national;
 - (c) if the individual is a national of both Parties or of neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

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

ARTICLE 5

PENSIONS

1 Pensions, (including government service pensions) and other similar remuneration paid to an individual who is a resident of a Party in consideration of past employment shall be taxable only in that Party.

2 Pensions and other payments made under the social security legislation of a Party to an individual who is a resident of the other Party shall be taxable only in that other Party.

3 However, paragraphs 1 and 2 of this Article shall not apply where the pension, payment or other remuneration is not subject to tax in the Party of which the individual is a resident.

ARTICLE 6
GOVERNMENT SERVICE

1 (a) Salaries, wages and other similar remuneration (other than pensions) paid by the Government of the Isle of Man to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from New Zealand tax if the individual is not resident in New Zealand or is resident in New Zealand solely for the purposes of rendering those services.

(b) Salaries, wages and other similar remuneration (other than pensions) paid by the Government of New Zealand to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from Manx tax if the individual is not resident in the Isle of Man or is resident in the Isle of Man solely for the purposes of rendering those services.

2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration (other than pensions) paid in respect of services rendered in connection with any trade or business carried on by a Party may be taxed in accordance with the laws of a Party.

ARTICLE 7
STUDENTS

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

ARTICLE 8
MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER
PRICING ADJUSTMENTS

1 Where a resident of a Party considers the actions of the other Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Party. The case shall be presented within three years of the first notification of the adjustment.

2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

ARTICLE 9
EXCHANGE OF INFORMATION

The competent authorities of the Parties shall exchange such Information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the *Agreement between the Government of the Isle of Man and the Government of New Zealand on the Exchange of Information with Respect to Taxes* (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Party).

ARTICLE 10
ENTRY INTO FORCE

The Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided the *Agreement between the Government of the Isle of Man and the Government of New Zealand on the Exchange of Information with Respect to Taxes* is in force between the Parties, thereupon have effect:

- (a) In respect of Manx tax, for any year of income beginning on or after 6 April in the calendar year following that in which this Agreement enters into force;
and
- (b) in respect of New Zealand tax, for any year of income beginning on or after 1 April in the calendar year following that in which this Agreement enters into force.

ARTICLE 11

TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the Parties may give to the other Party through the appropriate channel written notice of termination.

2 Such termination shall become effective:

(a) In respect of Manx tax, for any year of income beginning on or after 6 April in the calendar year following that in which the notice of termination is given;

(b) In respect of New Zealand tax, in the year of income beginning on or after 1 April in the calendar year following that in which the notice of termination is given.

3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the appropriate channel of written notice of termination of the *Agreement between the Government of the Isle of Man and the Government of New Zealand on the Exchange of Information with Respect to Taxes*, terminate and cease to be effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of such notice.

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

DONE at London, United Kingdom this 27th day of July, 2009, in duplicate in the English language.

**FOR THE GOVERNMENT
OF THE ISLE OF MAN:**



.....
**Honourable Allan Robert Bell MHK
Minister of the Treasury**

**FOR THE GOVERNMENT
OF NEW ZEALAND:**



.....
**Derek Leask
New Zealand High Commissioner
to the United Kingdom of Great
Britain and Northern Ireland**

EXPLANATORY NOTE
(This note is not part of the Order)

This Order is made under section 54 of the Income Tax Act 1970. It implements the agreement between the Government of the Isle of Man and the Government of New Zealand for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments.