

**CONVENTION BETWEEN AUSTRALIA AND NEW ZEALAND FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON
INCOME AND FRINGE BENEFITS AND THE PREVENTION OF FISCAL
EVASION**

The Government of Australia and the Government of New Zealand,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion,

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

PERSONS COVERED

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. In the case of an item of income (including profits or gains) derived by or through a person that is fiscally transparent with respect to that item of income under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income of a resident.

Article 2

TAXES COVERED

1. The taxes to which this Convention shall apply are:
 - a) in the case of Australia:
 - (i) the income tax, including the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources; and
 - (ii) the fringe benefits tax

imposed under the federal law of Australia

(hereinafter referred to as "Australian tax");

b) in the case of New Zealand:

the income tax, including the fringe benefit tax

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

2. The Convention shall apply also to any identical or substantially similar taxes that are imposed under the federal laws of Australia or the laws of New Zealand after the date of signature of the Convention in addition to, or in place of, the taxes listed in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in the laws of their respective States relating to the taxes to which the Convention applies within a reasonable period of time after those changes.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

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

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

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

(iv) the Territory of Ashmore and Cartier Islands;

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

(vi) the Coral Sea Islands Territory,

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

b) 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;

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

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

e) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;

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

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

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

i) the term "national", in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State;
and

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

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

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

l) the term "recognised stock exchange" means:

(i) the Australian Securities Exchange and any other Australian stock exchange recognised as such under Australian law;

(ii) the securities markets (other than the New Zealand Debt Market) operated by the New Zealand Exchange Limited; and

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

m) the term "managed investment trust" means a trust that is a managed investment trust for the purposes of Australian tax.

2. For the purposes of Articles 5 and 6, the term "natural resources" means naturally-occurring deposits or sources of materials and substances, such as minerals, oils, gas and water. The term also includes naturally-occurring forests and fish.

3. As regards the application of the Convention 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 laws of that State concerning the taxes to which the Convention 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.

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

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax as a resident of that State, and also includes that State and any political subdivision or local authority of

that State. This term however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then their 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 that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State in which that 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 that individual is a national.

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. If the State in which the place of effective management is situated cannot be determined, or the place of effective management is in neither State, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement in accordance with Article 25 the Contracting State of which the person shall be deemed to be a resident for the purposes of the Convention, having regard to its places of management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention.

4. Where an item of income, profits or gains derived by an individual is exempt from tax in New Zealand by reason only of the status of that individual as a transitional resident under the laws of New Zealand, no relief or exemption from tax shall be available under this Convention in Australia in respect of that item of income, profits or gains.

5. Notwithstanding paragraph 3 of this Article, where by reason of paragraph 1 of this Article a company, which is a participant in a dual listed company arrangement, is a resident of both Contracting States then it shall be deemed to be a resident only of the

Contracting State in which it is incorporated, provided it has its primary stock exchange listing in that State.

6. The term "dual listed company arrangement" as used in this Article means an arrangement pursuant to which two companies that are listed on a stock exchange specified in subparagraphs 1*l*(*i*) and (*ii*) of Article 3 respectively, while maintaining their separate legal entity status, shareholdings and listings, align their strategic directions and the economic interests of their respective shareholders through:

a) the appointment of common (or almost identical) boards of directors, except where the effect of the relevant regulatory requirements prevents this;

b) management of the operations of the two companies on a unified basis;

c) equalised distributions to shareholders in accordance with an equalisation ratio applying between the two companies, including in the event of a winding up of one or both of the companies;

d) the shareholders of both companies voting in effect as a single decision-making body on substantial issues affecting their combined interests; and

e) cross-guarantees as to, or similar financial support for, each other's material obligations or operations, except where the effect of the relevant regulatory requirements prevents such guarantees or financial support.

7. Notwithstanding the other provisions of this Convention, a managed investment trust which receives income (including profits and gains) arising in New Zealand shall be treated, for the purposes of applying the Convention to such income, as an individual resident of Australia and as the beneficial owner of the income it receives, but only to the extent that residents of Australia are the owners of the beneficial interests in the managed investment trust. However, if:

a) the managed investment trust has its principal class of units listed on a stock exchange specified in subparagraph 1 *l*(*i*) of Article 3 and is regularly traded on one or more recognised stock exchanges; or

b) at least 80 per cent of the value of the beneficial interests in the managed investment trust is owned by residents of Australia,

the managed investment trust shall be treated as an individual resident of Australia and as the beneficial owner of all the income it receives.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of the 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;

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

g) an agricultural, pastoral or forestry property.

3. A building site or a construction, installation or assembly project shall constitute a permanent establishment but only if it lasts more than 6 months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:

a) performs services in the other Contracting State

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

(ii) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or for connected projects

through one or more individuals who are present and performing such services in that other State;

b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources or standing timber situated in that other State for a period or periods exceeding in the aggregate 90 days in any twelve month period; or

c) operates substantial equipment in the other State (including as provided in subparagraph *b)*) for a period or periods exceeding in the aggregate 183 days in any twelve month period,

such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 7 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that paragraph.

5. For the purposes of subparagraph *a)(ii)* of paragraph 4, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual. Furthermore, services performed through an individual who is present and performing such services in a State for any period not exceeding 5 days shall be disregarded for the purposes of subparagraph *a)(ii)* of paragraph 4, unless such services are performed by that individual in that State on a regular or frequent basis.

6. *a)* The duration of activities under paragraphs 3 and 4 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.

b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.

c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:

(i) one is controlled directly or indirectly by the other; or

(ii) both are controlled directly or indirectly by the same person or persons.

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

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

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

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

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

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

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs *a)* to *e)* of this paragraph,

provided that such activities are, in relation to the enterprise, of a preparatory or auxiliary character.

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

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

b) manufactures or processes in a Contracting 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 7 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

9. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a person

who is 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 as such a broker or agent.

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

11. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

CHAPTER III

TAXATION OF INCOME AND FRINGE BENEFITS

Article 6

INCOME FROM REAL PROPERTY

1. Income derived by a resident of a Contracting State from real property (including profits of an enterprise from agriculture, forestry or fishing) may be taxed in the Contracting State in which the real property is situated.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated and includes:

a) any natural resources, property accessory to real property, rights to which the provisions of general law respecting real property apply, and rights to standing timber;

b) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for natural resources, and a right to exploit those resources; and

c) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or for the right to explore for or exploit, natural resources.

Ships, boats and aircraft shall not be regarded as real property.

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

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

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from real property of an enterprise. The profits of the enterprise shall be determined in accordance with the principles of paragraphs 2 and 3 of Article 7 as if such income were attributable to a permanent establishment in the Contracting State in which the real property is situated.

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 of the enterprise, being expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is

inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

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

6. Nothing in this Article shall affect the application of any law of a Contracting State relating to tax imposed on income from insurance with non-resident insurers.

7. Where:

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

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

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

8. No adjustments to the profits attributable to a permanent establishment of an enterprise for a year of income shall be made by a Contracting State after the expiration of 7 years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of 7 years, an audit into the profits of the enterprise has been initiated by either State.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State derived from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, amounts paid or payable to an enterprise of a Contracting State for carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in the other Contracting State and are discharged at a place in that other State, or for leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other State.
3. The profits to which the provisions of paragraphs 1 and 2 apply include profits from the operation of ships or aircraft derived through participation in a pooling arrangement or other profit sharing arrangement.
4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in the transport of goods or merchandise, provided that such use, maintenance or rental is directly connected or ancillary to the operation of ships or aircraft in international traffic.

Article 9

ASSOCIATED ENTERPRISES

1. Where

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

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

3. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which might have been expected to have accrued to the enterprise of the first-mentioned State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, 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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

4. No adjustments to the profits of an enterprise for a year of income shall be made by a Contracting State in accordance with the provisions of paragraphs 1 and 2 after the expiration of 7 years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of 7 years, an audit into the profits of an enterprise has been initiated by that State.

Article 10

DIVIDENDS

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

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

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

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

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

3. Notwithstanding the provisions of paragraph 2 of this Article, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a company that is a resident of the other Contracting State that has owned, directly or indirectly through one or more residents of either Contracting State, shares representing 80 per cent or more of the voting power of the company paying the dividends for a 12 month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends:

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

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

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

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

c) does not meet the requirements of subparagraphs *a)* or *b)* of this paragraph but the competent authority of the first-mentioned Contracting State determines that the first sentence of paragraph 9 of this Article does not apply. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits of this Convention under this subparagraph.

4. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends holds directly no more than 10 per cent of the voting power of the company paying the dividends, and the beneficial owner is a Contracting State, or political subdivision or a local authority thereof (including a government investment fund).

5. The term "dividends" as used in this Article means income from shares or other rights participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident for the purposes of its tax.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting 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.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company—being dividends beneficially owned by a person who is not a resident of the other Contracting State—except insofar as the holding in respect of which such 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.

8. Notwithstanding paragraph 7, dividends paid by a company which is a resident of Australia for the purposes of Australian tax and which is also a resident of New Zealand for the purposes of New Zealand tax may be taxed in a Contracting State to the extent that the dividends are paid out of profits or income arising in that State. Where such dividends are beneficially owned by a resident of the other Contracting State, paragraphs 2 and 3 of this Article shall apply as if the company paying the dividends were a resident only of the first-mentioned State.

9. No relief shall be available under this Article if it is 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 beneficially owned by a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the first-mentioned State if:
 - a)* the interest is derived by a Contracting State or by a political sub-division or a local authority thereof (including a government investment fund), or by a bank performing central banking functions in a Contracting State; or
 - b)* the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.
4. Notwithstanding paragraph 3, interest referred to in subparagraph *b)* of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if:
 - a)* in the case of interest arising in New Zealand, it is paid by a person that has not paid approved issuer levy in respect of the interest. This subparagraph *a)* shall not apply if New Zealand does not have an approved issuer levy, or the payer of the interest is not eligible to elect to pay the approved issuer levy, or if the rate of the approved issuer levy payable in respect of such interest exceeds two percent of the gross amount of the interest. For the purposes of this Article, "approved issuer levy" includes any identical or substantially similar charge payable by the payer of interest

arising in New Zealand enacted after the date of this Convention in place of approved issuer levy; or

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

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, as well as all other income treated as income from money lent by the laws, relating to tax, of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.

6. The provisions of paragraphs 1 and 2, subparagraph *b)*