

Schedule 1

Agreement Between the Government of New Zealand and the Government of Fiji for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

- Schedule heading: amended, on 19 December 1986, by clause 2(2)(a) of the Double Taxation Relief (Fiji) Order 1977, Amendment No 1 (SR 1986/374).

The Government of New Zealand and the Government of Fiji,
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 Personal scope

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

Article 2 Taxes covered

- (1) The taxes which are the subject of this Agreement are:
 - (a) in Fiji:
the income tax (including basic tax and normal tax, the non-resident dividend withholding tax, the interest withholding tax and the dividend tax);
 - (b) in New Zealand:
the income tax and the excess retention 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 by either Contracting State.
- (3) For the purposes of paragraph (1)(b) of this Article the income tax does not include the bonus issue tax.

Article 3 General definitions

- (1) In this Agreement, unless the context otherwise requires,—
 - (a) the term “Fiji” means the islands of Fiji, including the island of Rotuma and its dependencies; and includes all areas of water which, in accordance with international law, have been, or may hereafter be, designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the seabed and its subsoil and the natural resources thereof;

- (b) the term “New Zealand”, when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) but does not include the Cook Islands, Niue or the Tokelau Islands; it also includes areas adjacent to the territorial sea of the metropolitan territory of New Zealand (including the outlying islands) which by New Zealand legislation and in accordance with international law have been, or may hereafter be, designated as areas over which New Zealand has sovereign rights for the purposes of exploring them or of exploring, exploiting, conserving and managing the natural resources of the sea, or of the seabed and subsoil;
- (c) the terms “Contracting State”, “one of the Contracting States”, and “other Contracting State” mean Fiji or New Zealand, as the context requires;
- (d) the term “person” includes any body of persons, corporate or not corporate;
- (e) the term “Fiji tax” means tax imposed by Fiji being tax to which this Agreement applies by virtue of Article 2; the term “New Zealand tax” means tax imposed by New Zealand being tax to which this Agreement applies by virtue of Article 2;
- (f) the term “tax” means Fiji tax or New Zealand tax, as the context requires;
- (g) the term “competent authority” means, in the case of Fiji, the Commissioner of Inland Revenue or his authorised representative and, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;
- (h) the term “natural resource royalties” means payments of any kind to the extent to which they are made as consideration for the use of, or the right to use, any mine or quarry, or as consideration for the extraction, removal or other exploitation of, or the right to extract, remove or otherwise exploit, standing timber or any natural resource;
- (i) the term “industrial or commercial profits” means profits derived by an enterprise of a Contracting State from the carrying on of a trade or business, but does not include—
 - (i) dividends, interest, royalties (as defined in Article 11), or natural resource royalties;
 - (ii) income from the sale or other disposition of land situated in the other Contracting State or of any estate or interest in land so situated, or from the sale or other disposition of any share or comparable interest in a company or association whose assets consist wholly or principally of any such land or any such estate or interest;
 - (iii) income from the grant or renewal, or from the sale or other disposition, of any right relating to the operation of any mine or

quarry, situated in the other Contracting State or to the extraction, removal or other exploitation of any standing timber or of any natural resource so situated, or from the sale or other disposition of any share or comparable interest in a company or association whose assets consist wholly or principally of any such right; in this sub-paragraph (i)(iii), the term “right” means any right, licence, permit, authority, title, option, privilege or other concession and includes a share or interest in any right, licence, permit, authority, title, option, privilege or other concession;

- (iv) rent;
 - (v) profits from operating ships or aircraft;
 - (vi) remuneration or other income for personal (including professional) services;
 - (vii) income from the furnishing of services of employees or others by any person in the course of the carrying on by that person of a profession or vocation; or
 - (viii) charges for the bailment of livestock;
 - (j) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean an enterprise carried on by a Fiji resident or an enterprise carried on by a New Zealand resident, as the context requires;
 - (k) words in the singular include the plural and words in the plural include the singular.
- (2) In determining, for the purposes of Article 9, 10 or 11, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.
 - (3) In this Agreement, the terms “Fiji tax” and “New Zealand tax” do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.
 - (4) In the application of the provisions of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.

Article 4

Fiscal domicile

- (1) For the purposes of this Agreement—
 - (a) the term “New Zealand resident” means a person who is resident in New Zealand for the purposes of New Zealand tax;

- (b)the term “Fiji resident” means a person who is a resident of Fiji for the purposes of Fiji tax.
- (2)Where by reason of the provisions of paragraph (1) of this Article an individual is both a New Zealand resident and a Fiji resident then his status shall, for the purposes of this Agreement, be determined in accordance with the following rules—
 - (a)he shall be deemed to be solely a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be solely a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);
 - (b)if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be solely a resident of the Contracting State in which he has an habitual abode;
 - (c)if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be solely a resident of the Contracting State of which he is a national;
 - (d)if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- (3)Where, by reason of the provisions of paragraph (1) of this Article, a person other than an individual is both a New Zealand resident and a Fiji resident then its status shall, for the purposes of this Agreement, be determined in accordance with the following rules—
 - (a)it shall be treated solely as a New Zealand resident if the centre of its practical management is situated in New Zealand and solely as a Fiji resident if the centre of its practical management is situated in Fiji, whether or not any person outside New Zealand or Fiji, as the case may be, exercises or is capable of exercising any over-riding control of it or of its policy or affairs in any way whatsoever; and
 - (b)failing a resolution of the matter under subparagraph (a) of this paragraph, it shall be treated solely as a New Zealand resident if it is established by or under the laws of New Zealand and solely as a Fiji resident if it is established by or under the laws of Fiji.
- (4)For the purposes of this Article the term “national” means—
 - (a)in relation to New Zealand, any individual who is a New Zealand citizen;
 - (b)in relation to Fiji, any individual who is a Fiji citizen.
- (5)For the purposes of this Agreement, the terms “resident of a Contracting State” and “resident of the other Contracting State” mean a person who is a New Zealand resident or a person who is a Fiji resident, as the context requires.

Article 5

Permanent establishment

- (1) For the purposes of this Agreement the term “permanent establishment”, in relation to an enterprise, means a fixed place of trade or business in which the trade or business of the enterprise is wholly or partly carried on.
- (2) The term “permanent establishment” includes—
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, quarry or other place of extraction of natural resources;
 - (g) an agricultural, pastoral or forestry property; and
 - (h) a building site or construction, installation or assembly project which exists for more than six months.
- (3) The term “permanent establishment” shall not be deemed 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 fixed place of trade or business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or
 - (d) the maintenance of a fixed place of trade or business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.
- (4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if—
 - (a) it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken, in that other Contracting State; or
 - (b) substantial equipment is in that other Contracting State being used or installed by, for or under contract with the enterprise.
- (5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom paragraph (7) of this Article applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if—
 - (a) he has, and habitually exercises in that first-mentioned Contracting State, any authority to conclude contracts on behalf of the enterprise,

- unless his activities are limited to the purchase of goods or merchandise for the enterprise;
 - (b)there is maintained in that first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders on behalf of the enterprise; or
 - (c)in so acting he carries out in that first-mentioned Contracting State activities of any of the kinds referred to in sub-paragraph (a)(i) or sub-paragraph (a)(ii) or sub-paragraph (a)(iii) of paragraph (6) of this Article.
- (6)In any case where paragraph (5) of this Article does not apply, an enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if—
 - (a)for, or at or to the order of, that enterprise, another enterprise—
 - (i)manufactures, assembles, processes, packs or distributes in that other Contracting State any goods or merchandise;
 - (ii)performs, in that other Contracting State, any mining or quarrying operations or any operations carried on in association with mining or quarrying operations, or performs, in that other Contracting State, any operations for the extraction, removal or other exploitation of standing timber or of any natural resources; or
 - (iii)breeds, manages, agists or raises in that other Contracting State any livestock; and
 - (b)either enterprise participates directly or indirectly in the management, control or capital of the other enterprise, or the same persons participate directly or indirectly in the management, control or capital of both enterprises.
- (7)An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on trade or business in that other Contracting State through a broker, a general commission agent or any other agent of independent status, where such a person is acting in the ordinary course of his business as a broker, a general commission agent or other agent of independent status.
- (8)The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on trade or business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute a place of business of either company a permanent establishment of the other.

Article 6

Industrial or commercial profits

- (1)Industrial or commercial profits of an enterprise of a Contracting State shall be subject to tax only in that Contracting State unless the enterprise carries on

trade or business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on trade or business as aforesaid, tax may be imposed by that other Contracting State on the whole of the industrial or commercial profits of the enterprise from sources within that other Contracting State whether or not those profits are attributable to that permanent establishment.

- (2) Where an enterprise of a Contracting State carries on trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to make if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment; and the profits so attributed shall be deemed to be income derived from sources in that other Contracting State and shall be taxed accordingly.
- (3) In determining the industrial or commercial profits attributable to a permanent establishment in a Contracting State, there shall be allowed as deductions all expenses of the enterprise, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise and which are reasonably connected with the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.
- (4) If the information available to the competent authority of the Contracting State concerned is inadequate to determine the industrial or commercial profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of the law of that Contracting State in relation to the liability of the enterprise to pay tax in respect of the permanent establishment on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principle stated in this Article.
- (5) Industrial or commercial profits shall not be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
- (6) Nothing in this Article shall apply to either Contracting State to prevent the operation in the Contracting State of any provisions of its law at any time in force relating to the taxation of any income from the business of any form of insurance. Provided that if the law in force in either Contracting State at the date of signature of this Agreement relating to the taxation of that income is varied (otherwise than in minor respects so as not to affect its general character), the Contracting Governments shall consult with each other with a view to agreeing to such amendment of this paragraph as may be appropriate.

Article 7

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 operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length, 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.

- (2)Profits included in the profits of an enterprise of a Contracting State under paragraph (1) of this Article shall be deemed to be income of that enterprise derived from sources in that Contracting State and shall be taxed accordingly.
- (3)If the information available to the competent authority of a Contracting State is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might have been expected to accrue to an enterprise, nothing in this Article shall affect the application of any law of that Contracting State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principle stated in this Article.

Article 8

Shipping and air transport

- (1)A resident of a Contracting State shall, subject to paragraphs (2), (3) and (4) of Article 6 and to Article 7, be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than operations confined solely to places in that other Contracting State.
- (2)The exemption provided in paragraph (1) of this Article shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organisation or in an international operating agency but only to the extent to which the share of the profits is not attributable to profits from voyages, flights or operations confined solely to places in the other Contracting State.

- (3) For the purposes of this Article and Article 20, profits derived from the carriage of passengers, livestock, mails, goods or merchandise shipped in a Contracting State for discharge at another place in that Contracting State shall be treated as profits from the operation of a ship or aircraft confined solely to places in that Contracting State.
- (4) If the mode of operation of ships or aircraft by residents of either of the Contracting States at the date of signature of this Agreement is subsequently so changed that either of the Contracting Governments considers that the wording of the Article should be reviewed, the Contracting Governments shall consult with each other with a view to deciding whether any modification of this Article is desirable.

Article 9 Dividends

- (1) Dividends paid by a company which is a Fiji resident to a person who is a New Zealand resident may be taxed in New Zealand. However, such dividends may be taxed in Fiji and according to the law of Fiji, but, where that person is the beneficial owner of the dividends, the amount of Fiji tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
- (2) Dividends paid by a company which is a New Zealand resident to a person who is a Fiji resident may be taxed in Fiji. However, such dividends may be taxed in New Zealand and according to the law of New Zealand, but, where that person is the beneficial owner of the dividends, the amount of New Zealand tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
- (3) The limitations on the amount of tax for which paragraphs (1) and (2) of this Article provide shall not apply if the person who is the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the holding giving rise to the dividends is effectively connected with that permanent establishment. In such a case, the dividends may be taxed in that other Contracting State in accordance with the law of that other Contracting State.
- (4) Dividends paid by a company which is a resident of a Contracting State, being dividends which are derived and beneficially owned by a person who is not a resident of the other Contracting State, shall be exempt from tax in that other Contracting State.

Article 10 Interest

- (1) Interest derived from sources within a Contracting State by a person who is a resident of the other Contracting State may be taxed in that other Contracting State. However, such interest may be taxed in that first-mentioned Contracting State and according to the law of that State, but, where that person is the

beneficial owner of the interest, the amount of tax so charged shall not exceed 10 per cent of the gross amount of the interest.

- (2)The limitation on the amount of tax for which paragraph (1) of this Article provides shall not apply if the person who is the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the indebtedness giving rise to the interest is effectively connected with that permanent establishment. In such a case, the interest may be taxed in that other Contracting State in accordance with the law of that other Contracting State.
- (3)The limitation on the amount of tax for which paragraph (1) of this Article provides shall not apply if the person who is the beneficial owner of the interest, being a resident of a Contracting State, and the person paying the interest are associated with each other. In such a case, the interest may be taxed in the other Contracting State in accordance with the law of that other Contracting State. For the purposes of this paragraph a person is associated with another person if either person controls directly or indirectly the other or if the same persons control directly or indirectly both. For this purpose the term “control” includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.
- (4)Where the application of the limitation on the amount of tax for which paragraph (1) of this Article provides is not excluded by virtue of the foregoing provisions of this Article, but, owing to a special relationship between the person paying the interest and the person who is the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation on the amount of tax for which paragraph (1) of this Article provides shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State.

Article 11

Royalties

- (1)Royalties derived from sources within a Contracting State by a person who is a resident of the other Contracting State may be taxed in that other Contracting State. However, such royalties may be taxed in that first-mentioned Contracting State and according to the law of that State, but, where that person is the beneficial owner of the royalties, the amount of tax so charged shall not exceed 15 per cent of the gross amount of the royalties.
- (2)The term “royalties” in this Article means payments of any kind to the extent to which they are made as consideration for—
 - (a)the use of or the right to use any—
 - (i)copyright, patent, design or model, plan, secret formula or process, trade-mark, or other like property or right;

- (ii) industrial, agricultural, commercial or scientific equipment;
 - (iii) motion picture films; or
 - (iv) films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting;
 - (b) the supply of—
 - (i) scientific, technical, industrial or commercial knowledge or information;
 - (ii) any assistance which is given as a means of enabling the application or enjoyment of such knowledge or information; or
 - (c) the supply by a resident of a Contracting State of management services in the other Contracting State,

but does not include natural resource royalties.
- (3) The limitation on the amount of tax for which paragraph (1) of this Article provides shall not apply if the person who is the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the knowledge, information, assistance, right or property giving rise to the royalties is effectively connected with that permanent establishment. In such a case, the royalties may be taxed in that other Contracting State in accordance with the law of that other Contracting State.
- (4) Where the application of the limitation on the amount of tax for which paragraph (1) of this Article provides is not excluded by virtue of paragraph (3) of this Article but owing to a special relationship between the person paying the royalties and the person who is the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation on the amount of tax for which paragraph (1) of this Article provides shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State.

Article 12

Personal services

- (1) Subject to Articles 15, 17 and 18, remuneration or income (other than pensions) derived by an individual who is a resident of a Contracting State in respect of personal (including professional) services shall be subject to tax only in that Contracting State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration or income as is derived in respect thereof shall be deemed to have a source in, and may be subjected to tax in, that other Contracting State.
- (2) Notwithstanding paragraph (1) of this Article, remuneration (other than pensions) derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be exempt from tax in that other Contracting State if—

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the income year of that other Contracting State; and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of that other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment which that employer has in that other Contracting State; and
- (d) the remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned Contracting State.
- (3) Notwithstanding paragraphs (1) and (2) of this Article, remuneration in respect of services performed aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be subjected to tax in that Contracting State. For the purposes of this paragraph, the term “international traffic” includes traffic between places in one country in the course of a voyage which extends over more than one country.

Article 13

Directors' fees

Notwithstanding anything contained in Article 12, directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State shall be deemed to have a source in, and may be taxed in, that other Contracting State.

Article 14

Public entertainers and athletes

- (1) Notwithstanding anything contained in Article 12, remuneration or income derived by public entertainers (such as theatrical, motion picture, radio or television artistes and musicians) and by athletes from their personal activities as such shall be deemed to have a source in, and may be subjected to tax in, the Contracting State in which these activities are exercised.
- (2) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if it provides the services of a public entertainer or athlete referred to in paragraph (1) of this Article in that other Contracting State.

Article 15

Governmental functions

- (1) Remuneration (other than pensions) paid by the Government of Fiji to any individual for 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 for the purposes of New Zealand tax or is

resident in New Zealand for the purposes of New Zealand tax solely for the purpose of rendering those services.

- (2) Remuneration (other than pensions) paid by the Government of New Zealand to an individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Fiji tax if the individual is not a resident of Fiji for the purposes of Fiji tax or is a resident of Fiji for the purposes of Fiji tax solely for the purpose of rendering those services.
- (3) Paragraphs (1) and (2) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either Government for the purposes of profit.

Article 16

New Zealand Government's Bilateral Aid to Fiji

Notwithstanding anything elsewhere in this Agreement, income derived by any person from the participation in any capacity whatsoever of that person in the New Zealand Government's Bilateral Aid Programme to Fiji shall be exempt from Fiji tax if—

- (a) that person is not a resident of Fiji for the purposes of Fiji tax or is a resident of Fiji for the purposes of Fiji tax solely for the purpose of such participation; and
- (b) that income is subject to tax in New Zealand.

Article 17

Professors and teachers

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who immediately before that visit was a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is, or, upon the application of this Article, will be, subject to tax in the other Contracting State.

Article 18

Students and trainees

A student or trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and is present in the first-mentioned Contracting State solely for the purpose of his education or training shall not be taxed in that first-mentioned Contracting State on payments (including salary or wages) to the extent to which he receives such payments for the purpose of his maintenance, education or training provided that such payments are made to him from outside that first-mentioned Contracting State.

Article 19

Dual residence

- (1) This Article shall apply to a person who is a resident of Fiji for the purposes of Fiji tax and is also resident in New Zealand for the purposes of New Zealand tax.
- (2) Where such a person is treated for the purposes of this Agreement solely as a resident of a Contracting State he shall be exempt in the other Contracting State from tax on income other than income which, under the law of that other Contracting State or under this Agreement, is derived, or is deemed to be derived, from sources in that other Contracting State.

Article 20

Elimination of double taxation

- (1) Subject to any provisions of the law of Fiji which may from time to time be in force and which relate to the allowance of a credit against Fiji tax of tax paid in a country outside Fiji (which shall not affect the general principle hereof), New Zealand tax paid under the law of New Zealand and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a Fiji resident from sources in New Zealand (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 Fiji tax payable in respect of that income.
- (2) Subject to any provisions of the law of New Zealand which may from time to time be in force and 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 principle hereof), Fiji tax paid under the law of Fiji and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Fiji (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.
- (3) For the purposes of paragraph (2) of this Article the term “Fiji tax paid” shall be deemed to include any amount which would have been payable as Fiji tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under—
 - (a) any of the following provisions, that is to say—
 - (i) Section 16(2)(a), (b) and (d), Section 8(6)(c) and Section 9(3)(h) of the Income Tax Act 1974; and
 - (ii) Section 8(1) of the Hotels Aid Ordinance 1964, (Cap. 185): provided that relief is given for the same year under either section 16(2)(a) or section 16(2)(b) of the Income Tax Act 1974 or section 8(1) of the Hotels Aid Ordinance so far as they were in force on, and have not been modified since, the date of signature of this Agreement or have been modified only in minor respects so as not to affect their general character;
 - or

- (b) any other provision which may subsequently be made granting an exemption or reduction which is agreed, in an Exchange of Letters between the Contracting States, to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.
- (4) For the purposes of this Article—
- (a) (i) New Zealand tax borne by a Fiji resident in respect of dividends paid by a company which is a New Zealand resident shall be treated as tax in respect of income from sources in New Zealand;
 - (ii) Fiji tax borne by a New Zealand resident in respect of dividends paid by a company which is a Fiji resident shall be treated as tax in respect of income from sources in Fiji.
 - (b) interest, royalties, (as defined in Article 11) and natural resource royalties which are derived by a resident of a Contracting State and which under the law of the other Contracting State—
 - (i) are derived from sources in that other Contracting State; or
 - (ii) being derived by a non-resident are subject to withholding tax,
 shall be treated in the first-mentioned Contracting State as having a source in that other Contracting State;
 - (c) remuneration in respect of services performed aboard a ship or aircraft operated in international traffic by a resident of a Contracting State shall be treated as having a source in that Contracting State;
 - (d) profits derived by a resident of a Contracting State from the operation of ships or aircraft, being profits confined solely to places in the other Contracting State, shall be treated as having a source in that other Contracting State;
 - (e) an amount which, for the purposes of tax in a Contracting State, is included in the taxable income of a person who is a resident of the other Contracting State, and which is so included under any provision of the law of the first-mentioned Contracting State for the time being in force relating to the taxation of any income from the business of an insurance company shall be treated as having a source in that first-mentioned Contracting State;
 - (f) income referred to in paragraph (ii), (iii), or (iv) of the definition of “industrial or commercial profits” in section 3 of paragraph (1) of Article 3 shall be treated as having a source in the Contracting State in which the land, standing timber, natural resource or rent-producing property is situated.
 - (5) Where profits, on which an enterprise of a Contracting State has been charged to tax in that Contracting State, are also included in the profits of an enterprise of the other Contracting State as being profits which, because of the conditions operative between the two enterprises, might have been expected to accrue to the enterprise of that other Contracting State if the enterprises had been independent enterprises dealing at arm's length, the profits so included shall be treated for the purposes of this Article as profits of the enterprise of the first-mentioned Contracting State from a source in that other Contracting State and credit shall be given in accordance with this Article in respect of the extra tax chargeable in that other Contracting State as a result of the inclusion of such profits.

Article 21

Mutual agreement procedure

- (1) Where a taxpayer considers that the action of the competent authority in a Contracting State has resulted, or is likely to result, in double taxation contrary

to the provisions of this Agreement, he shall be entitled to present the facts to the competent authority in the Contracting State of which he is a resident and, should the taxpayer's claim be deemed worthy of consideration, the competent authority in that Contracting State shall endeavour to come to an agreement with the competent authority in the other Contracting State with a view to the avoidance of the double taxation in question.

- (2)The competent authority in a Contracting State may communicate directly with the competent authority in the other Contracting State for the purpose of giving effect to the provisions of this Agreement and in an endeavour to assure its consistent interpretation and application.

Article 22

Exchange of information

- (1)The competent authorities shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes to which this Agreement applies by virtue of Article 2.
- (2)Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or reviewing authority) concerned with the assessment or collection of the taxes to which this Agreement applies by virtue of Article 2, or the determination of appeals in relation thereto.
- (3)No information shall be exchanged which would disclose any trade secret or trade process.
- (4)A competent authority shall not be obliged by this Article to disclose to the other competent authority any information which does not relate directly to the affairs of a taxpayer with whom the other competent authority is concerned.

Article 23

Entry into force

- (1)This agreement shall come into force on the date on which the last of all such things shall have been done in Fiji and New Zealand as are necessary to give the Agreement the force of law in Fiji and New Zealand so far as its provisions affect Fiji tax and New Zealand tax respectively, and shall thereupon have effect—
 - (a)in Fiji—
in relation to Fiji tax, in respect of income derived during any income year beginning on or after 1 January 1976.
 - (b)in New Zealand—
in relation to New Zealand tax, in respect of income derived during any income year beginning on or after 1 April 1976.

- (2)The Contracting States shall, as soon as possible, inform one another in writing when the last of all such things shall have been done as are necessary to give the Agreement the force of law in the respective Contracting States.

Article 24

Termination

This Agreement shall continue in effect indefinitely, but either Contracting State may, on or before 30 June in any calendar year after the year 1979 give to the other Contracting State notice of termination and, in that event, this Agreement shall cease to be effective—

- (a)in Fiji—
in relation to Fiji tax, in respect of income derived during any income year beginning on or after 1 January in the calendar year next following that in which the notice is given.
- (b)in New Zealand—
in relation to New Zealand tax, in respect of income derived during any income year beginning on or after 1 April in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto have signed this Agreement.

Done at Wellington in duplicate this twenty-seventh day of October one thousand nine hundred and seventy-six in the English language.

P I Wilkinson
For the Government of New Zealand

C A Stinson
For the Government of Fiji

Protocol to the Agreement Between the Government of New Zealand and
the Government of Fiji 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 Fiji have agreed that the
following provision shall form an integral part of the Agreement:
In connection with Articles 9 and 20:

For the purposes of Articles 9 and 20, every reference to dividends paid shall include a reference to dividends distributed, credited, or dealt with in the interest of or on behalf of a person, and shall also include a reference to dividends deemed to have been distributed under the laws of a Contracting State.

This protocol shall enter into force on the same date as the Agreement.

Done at Wellington in duplicate this twenty-seventh day of October one thousand nine hundred and seventy-six in the English language.

P I Wilkinson
For the Government of New Zealand

C A Stinson
For the Government of Fiji