

## **AGREEMENT OF 1<sup>ST</sup> DECEMBER, 2010**

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

#### **Article 1**

##### **Persons Covered**

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

#### **Article 2**

##### **Taxes Covered**

**1.** This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party, irrespective of the manner in which they are levied.

**2.** There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

**3.** The existing taxes to which the Agreement shall apply are:

(a) in the case of the Hong Kong Special Administrative Region:

- (i) profits tax;
- (ii) salaries tax; and
- (iii) property tax;

whether or not charged under personal assessment;

(b) in the case of New Zealand, the income tax.

**4.** The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes listed in paragraph 3, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

**5.** Notwithstanding the provisions of paragraphs 1, 3 and 4, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting Party.

**6.** The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "New Zealand tax", as the context requires.

#### **Article 3**

##### **General Definitions**

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

- (a) (i) the term “Hong Kong Special Administrative Region” means any territory where the tax laws of the Hong Kong Special Administrative Region of the People’s Republic of China apply; and
- (ii) the term “New Zealand” means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
- (b) the term “business” includes the performance of professional services and of other activities of an independent character;
- (c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (d) the term “competent authority” means:
  - (i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or an authorised representative; and
  - (ii) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;
- (e) the terms “a Contracting Party” and “the other Contracting Party” mean the Hong Kong Special Administrative Region or New Zealand, as the context requires;
- (f) the term “enterprise” applies to the carrying on of any business;
- (g) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
- (i) the term “national”, in relation to New Zealand, means:
  - (i) any individual possessing the nationality or citizenship of New Zealand; and
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in New Zealand;
- (j) the term “person” includes an individual, a company, a trust, a partnership and any other body of persons;
- (k) the term “recognised stock exchange” means:
  - (i) the Stock Exchange of Hong Kong Limited and any Hong Kong Special Administrative Region stock exchange recognised under the law of the Hong Kong Special Administrative Region;
  - (ii) the securities markets operated by the New Zealand Exchange Limited and any other New Zealand investment exchange recognised under New Zealand law; and
  - (iii) any other stock exchange agreed upon by the competent authorities.

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

**3.** As regards the application of the Agreement at any time by a Contracting 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 the Agreement applies, 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 Contracting Party” means:

- (a) in the case of the Hong Kong Special Administrative Region,
  - (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;
  - (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;
  - (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
  - (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
- (b) in the case of New Zealand, a person resident in New Zealand for the purposes of New Zealand tax;
- (c) in the case of either Contracting Party, the Government of that Party and any political subdivision or local authority thereof.

**2.** Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then the status of the individual 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 the individual; if a permanent home is available to the individual in both Parties, the 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’s centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either Party, the individual shall be deemed to be a resident only of the Party in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both Parties or in neither of them, the individual shall be deemed to be a resident only of the Party in which the individual has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which the individual is a national (in the case of New Zealand);

- (d) if the individual has the right of abode in the Hong Kong Special Administrative Region and is also a national of New Zealand, or if the individual does not have the right of abode in the Hong Kong Special Administrative Region and is not a national of New Zealand, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

**3.** Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting 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**

### **Permanent Establishment**

**1.** For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

**2.** The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

**3.** A building site, or a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, constitutes a permanent establishment if such site, project or activities last more than 6 months.

**4.** An enterprise shall be deemed to have a permanent establishment in a Contracting Party and to carry on business through that permanent establishment if for more than 183 days in any 12 month period:

- (a) it carries on activities which consist of, or which are connected with, the exploration for or exploitation of natural resources, including quarries and standing timber, situated in that Party; or
- (b) it operates substantial equipment in that Party.

**5.** Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting Party performs services in the other Contracting Party:

- (a) through an individual who is present in that other Party for a period or periods exceeding in the aggregate 183 days in any 12 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 Party through that individual, or
- (b) for a period or periods exceeding in the aggregate 183 days in any 12 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 Party,

the activities carried on in that other Party in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other Party, unless these services are limited to those mentioned in paragraph 7 which, if performed through a fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of that paragraph. For the purposes of this paragraph, 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.

**6.** For the purposes of determining the duration of activities under paragraphs 3 and 4, the period during which activities are carried on in a Contracting Party by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that Party by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

**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 subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

**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 Party an authority to conclude contracts on behalf of the enterprise, or
- (b) manufactures or processes in a Contracting Party for the enterprise goods or merchandise belonging to the enterprise,

that enterprise shall be deemed to have a permanent establishment in that Party 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 Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

**10.** The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party

(whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **Article 6**

### **Income From Immovable Property**

**1.** Income derived by a resident of a Contracting Party from immovable property (including income from agriculture, forestry or fishing) situated in the other Contracting Party may be taxed in that other Party.

**2.** The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include any natural resources (including quarries), property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property, rights to explore for or exploit natural resources (including quarries) or standing timber, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit natural resources (including quarries) or standing timber; ships, boats and aircraft shall not be regarded as immovable property.

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

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

**5.** The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

## **Article 7**

### **Business Profits**

**1.** The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party 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 Party 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 Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

**3.** In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

**4.** Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such other method as may be prescribed by the laws of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such apportionment or other method; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

**5.** No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

**6.** For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

**7. Where**

- (a) a resident of a Contracting Party 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 Party 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 Party, a permanent establishment in the other Party,

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 Party by that resident through a permanent establishment situated in that other Party and the resident's share of profits may be taxed in the other Party but only so much of them as is attributable to that permanent establishment.

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

**9.** Nothing in this Article shall affect any provisions of the laws of either Contracting Party at any time in force as they affect the taxation of any income from any form of insurance.

**Article 8  
Shipping and Air Transport**

**1.** Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.

**2.** Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting Party to the extent the profits relate to transport confined solely to places in that other Party.

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

**4.** For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting Party for discharge at a place in that Party shall be treated as profits from transport confined solely to places in that Party.

**Article 9  
Associated Enterprises**

**1. Where**

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which

would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

**2.** Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

## **Article 10** **Dividends**

**1.** Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.

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

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company 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, dividends shall not be taxed in the Contracting Party of which the company paying the dividends is a resident if the beneficial owner is a company that is a resident of the other Contracting Party that holds, directly or indirectly through one or more residents of either Contracting Party, shares representing 50 per cent or more of the voting power of the company paying the dividends 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 paragraph 1 (k)(i) or (ii) of Article 3 and 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 paragraph 1 (k)(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 Party of which that company is a resident and the Contracting Party 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 Party determines that paragraph 8 of this Article does not apply. The competent authority of the first-mentioned Contracting Party shall consult the competent authority of the other Contracting Party before refusing to grant benefits of this Agreement under this subparagraph.

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

**4.** Notwithstanding the provisions of paragraphs 2 and 3 of this Article, dividends arising in a Contracting Party are exempt from tax in that Party, if they are paid:

- (a) in the case of the Hong Kong Special Administrative Region:
  - (i) to the Government of the Hong Kong Special Administrative Region;
  - (ii) to the Hong Kong Monetary Authority;
  - (iii) to any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;
- (b) in the case of New Zealand:
  - (i) to the Government of New Zealand;
  - (ii) to the Reserve Bank of New Zealand;
  - (iii) to the New Zealand Export Credit Office;
  - (iv) to the New Zealand Superannuation Fund;
  - (v) to any institution wholly or mainly owned by the Government of New Zealand as may be agreed from time to time between the competent authorities of the Contracting Parties.

**5.** The term “dividends” as used in this Article means income from shares and other income treated as income from shares by the laws of the Party of which the company making the distribution is a resident.

**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 Party, carries on business in the other Contracting Party 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 Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, 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 Party.

**8.** No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends or the conduct of its operations, to take advantage of this Article.

## **Article 11**

### **Interest**

**1.** Interest arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

**2.** However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

**3.** Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that Party, if it is paid:

- (a) in the case of the Hong Kong Special Administrative Region:
  - (i) to the Government of the Hong Kong Special Administrative Region;
  - (ii) to the Hong Kong Monetary Authority;
  - (iii) to any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;
- (b) in the case of New Zealand:
  - (i) to the Government of New Zealand;
  - (ii) to the Reserve Bank of New Zealand;
  - (iii) to the New Zealand Export Credit Office;
  - (iv) to the New Zealand Superannuation Fund;
  - (v) to any institution wholly or mainly owned by the Government of New Zealand as may be agreed from time to time between the competent authorities of the Contracting Parties.

**4.** Notwithstanding paragraph 2, interest shall be exempted from tax by the Contracting Party where it arises if the interest is beneficially owned by a resident of the other Contracting Party that is a financial institution that 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.

**5.** Notwithstanding paragraph 4, interest referred to in that paragraph may be taxed in the Party 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 Agreement 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.

**6.** The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income treated as income from

money lent by the laws, relating to tax, of the Contracting Party in which the income arises, but does not include any income which is treated as a dividend under Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

**7.** The provisions of paragraphs 1, 2, 3, 4 and 5 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

**8.** Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether the person is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by or deductible in determining the profits attributable to such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment is situated.

**9.** Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of the Agreement.

**10.** No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the interest, the creation or assignment of the debt-claim or other rights in respect of which the interest is paid, or the establishment, acquisition or maintenance of the person which is the beneficial owner of the interest or the conduct of its operations, to take advantage of this Article.

## **Article 12**

### **Royalties**

**1.** Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

**2.** However, such royalties may also be taxed in the Contracting Party in which they arise, and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

**3.** The term "royalties" as used in this Article means payments of any kind received as a consideration for:

- (a) the use of, or the right to use, any copyright (including the use of or the right to use any copyright of literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, cable programmes, or typographical arrangements of published editions), patent, design or model, plan, secret formula or process, trade-mark, or other like property or right;
- (b) the use of, or the right to use, any industrial, scientific or commercial equipment;
- (c) knowledge or information concerning technical, industrial, commercial or scientific experience;
- (d) any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c);

- (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

**4.** The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

**5.** Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether the person is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by or deductible in determining the profits attributable to such permanent establishment, then the royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

**6.** Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

**7.** No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the royalties, or with the creation or assignment of the rights in respect of which the royalties are paid, or the establishment, acquisition or maintenance of the person which is the beneficial owner of the royalties or the conduct of its operations, to take advantage of this Article.

## **Article 13**

### **Alienation of Property**

**1.** Income or gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

**2.** Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

**3.** Income or gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Party.

**4.** Income or gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares:

- (a) quoted on a recognised stock exchange; or
- (b) alienated or exchanged in the framework of a reorganisation of a company, a merger or a similar operation; or
- (c) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.

**5.** Nothing in this Agreement affects the application of the laws of a Contracting Party relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

## **Article 14**

### **Income From Employment**

**1.** Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

**2.** Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

- (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of assessment or income year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and
- (c) the remuneration is neither borne by nor deductible in determining the profits attributable to a permanent establishment which the employer has in the other Party.

**3.** Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

## **Article 15**

### **Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting Party in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

## **Article 16**

### **Entertainers and Sportspersons**

**1.** Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

**2.** Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

## **Article 17**

## **Pensions**

**1.** Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.

**2.** Notwithstanding the provisions of paragraph 1, lump sums paid under a mandatory provident fund scheme, and any other schemes or arrangements that may be established to replace the said scheme, shall be taxable only in the Hong Kong Special Administrative Region.

## **Article 18 Government Service**

**1.** (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

- (i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of New Zealand, is a national thereof; or
- (ii) did not become a resident of that Party solely for the purpose of rendering the services.

**2.** (a) Any pension (excluding a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of a Contracting Party to an individual in respect of services rendered to that Party may be taxed in that Party.

(b) Lump sums paid by, or paid out of funds created by, the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.

(c) Lump sums paid under a mandatory provident fund scheme, and any other schemes or arrangements that may be established to replace the said scheme, shall be taxable only in the Hong Kong Special Administrative Region.

(d) Notwithstanding the provisions of subparagraphs (a), (b) and (c) of this paragraph, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.

**3.** The provisions of Articles 14, 15, 16 and 17 shall apply to payments in respect of services rendered in connection with a business carried on by a Government of a Contracting Party.

## **Article 19 Students**

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

## **Article 20**

### **Other Income**

- 1.** Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.
- 2.** The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
- 3.** Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting Party not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting Party may also be taxed in that other Party.

## **Article 21**

### **Elimination of Double Taxation**

- 1.** Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), New Zealand tax paid under the laws of New Zealand and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in New Zealand, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.
- 2.** Subject to the provisions of the laws of New Zealand 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 of this Article), Hong Kong Special Administrative Region tax paid under the laws of the Hong Kong Special Administrative Region and consistent with the Agreement, in respect of income derived by a resident of New Zealand from sources in the Hong Kong Special Administrative Region (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.

## **Article 22**

### **Non-Discrimination**

- 1.** Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of New Zealand, are New Zealand nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is New Zealand) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.
- 2.** The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities in similar circumstances. This provision shall not be construed as

obliging a Contracting Party to grant to individuals who are residents of the other Contracting Party any personal allowances, reliefs and reduction for tax purposes which are granted to its own residents.

**3.** Except where the provisions of paragraph 1 of Article 9, paragraph 9 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

**4.** Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party in similar circumstances are or may be subjected.

**5.** This Article shall not apply to any provision of the laws of a Contracting Party which:

- (a) is designed to prevent the avoidance or evasion of taxes;
- (b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting Party under its laws;
- (c) provides for consolidation of group entities for treatment as a single entity for tax purposes;
- (d) provides for the transfer of losses within a group of companies;
- (e) does not allow tax rebates, credits or an exemption in relation to dividends paid by a company that is a resident of that Party for purposes of its tax; or
- (f) is otherwise agreed by the competent authorities of the Contracting Parties to be unaffected by this Article.

**6.** In this Article, provisions of the laws of a Contracting Party which are designed to prevent avoidance or evasion of taxes include:

- (a) measures designed to address thin capitalisation, dividend stripping and transfer pricing;
- (b) controlled foreign company and similar rules; and
- (c) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures.

## **Article 23**

### **Mutual Agreement Procedure**

**1.** Where a person considers that the actions of one or both of the Contracting Parties result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic laws of those Parties, present a case to the competent authority of the Contracting Party of which that person is a resident or, if that case comes under paragraph 1 of Article 22, to that of the Contracting Party in which that person has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which that person is a national (in the case of New Zealand). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

**2.** The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Parties.

**3.** The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

**4.** The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## **Article 24**

### **Exchange of Information**

**1.** The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

**2.** Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.

**3.** In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

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

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

## **Article 25**

### **Members of Government Missions**

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

## **Article 26**

### **Entry Into Force**

**1.** Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

**2.** The provisions of the Agreement shall thereupon have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force;

(b) in New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after 1 April in the calendar year next following that in which the Agreement enters into force;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force.

## **Article 27**

### **Termination**

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice of termination on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region: in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice of termination is given;

(b) in New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after 1 April in the calendar year next following that in which the notice of termination is given;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April in the calendar year next following that in which the notice of termination is given.