

## **2005 Income Tax Agreement and Final Protocol**

*Signed date: July 28, 2005*

*In force date: July 31, 2006*

*Effective date: In New Zealand: income subject to withholding tax, from September 1, 2006; other provisions, from April 1, 2007. In Spain, from January 1, 2007. See Article 26.*

*Status: In Force*

### **AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Kingdom of Spain and the Government of New Zealand, 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:

#### Chapter I

##### Scope of the Agreement

#### **Article 1 Persons Covered**

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

#### **Article 2 Taxes Covered**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. The existing taxes to which the Agreement shall apply are in particular:

a) in Spain:

i) the income tax on individuals;

ii) the corporation tax;

iii) the income tax on non-residents; and

iv) local taxes on income;

(hereinafter referred to as "Spanish Tax");

b) in New Zealand:

the income tax;

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

3. 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. The competent authorities of the Contracting States shall notify each other within a reasonable period of time of significant changes that have been made in their taxation laws.

#### Chapter II

##### Definitions

#### **Article 3 General Definitions**

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

a) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including its territorial sea and any area outside its territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;

b) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;

c) the terms "a Contracting State" and "the other Contracting State" mean Spain or New Zealand as the context requires;

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

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

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

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

h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when such transport is operated solely from and to a place or between places in the other Contracting State;

i) the term "competent authority" means:

i) in Spain: the Minister of Economy and Finance or an authorised representative;

ii) in New Zealand: the Commissioner of Inland Revenue or an authorised representative;

j) the term "national" means:

i) in the case of Spain, any individual possessing the nationality of Spain and in the case of New Zealand, any individual possessing the citizenship of New Zealand;

ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

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

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

#### **Article 4 Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual's status shall be determined as follows:

a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States or a permanent home is not available in either State, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);

b) if sole residence cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;

c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;

d) if the individual is a national of both 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 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

#### **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;

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

g) an agricultural, pastoral or forestry property;

h) a building site or construction, installation or assembly project which exists for more than twelve months.

3. An enterprise shall not be deemed to have a "permanent establishment" merely by reason of:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; or
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; or
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or
- 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; or
- e) the maintenance of a fixed place of business solely for the purpose of carrying activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research; or
- 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.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if, for more than twelve months:

- a) it carries on supervisory activities in that State in connection with a building site or a construction, installation or assembly project which is being undertaken in that State; or
- b) a structure, installation, drilling rig, ship or other like substantial equipment is used:
  - i) for the exploration for, or exploitation of, natural resources; or
  - ii) in activities connected with that exploration or exploitation.

5. For the purposes of determining the duration of activities under paragraphs 2 and 4, the period during which activities are carried on in a Contracting State 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 State 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.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 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.

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

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

### Chapter III

#### Taxation of Income

### **Article 6 Income From Immovable Property**

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and a right to receive variable or fixed payments as consideration for the exploitation of or the right to explore for or exploit, or payments in respect of the proceeds from the exploitation of any natural resources (including mineral deposits, oil or gas wells, 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. 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 State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

4. 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.

5. 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.

6. Where:

(a) a resident of a Contracting State beneficially owns, whether directly or through one or more interposed trusts, a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust other than a trust which is treated as a company for tax purposes; and  
(b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State, the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.

7. 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.

8. Income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other State, otherwise than through a permanent establishment situated in that other State, the income or profits derived by the enterprise from the insurance of those risks shall in that other State not exceed 10 per cent of the gross premiums paid for the insurance of those risks.

### **Article 8 Shipping and Aircraft Operations**

1. Profits from the operation of ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from ship or aircraft operations confined solely to places in that other State.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

4. The provisions of paragraphs 1 and 2 shall also apply to the share of the profits from ship or aircraft operations derived by a resident of a Contracting State through the participation in a pool service, in a joint business or in an international operating agency.

5. 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 State for discharge at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

### **Article 9 Associated Enterprises**

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions 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 State includes in the profits of an enterprise of that State-and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

### **Article 10 Dividends**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

### **Article 11 Interest**

1. Interest arising in a Contracting State, being interest which is beneficially owned by and paid to a resident of the other Contracting State, may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of the interest and the interest is beneficially owned by a Contracting State, a political subdivision or a local authority thereof.

4. The term "interest" 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 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 laws relating to tax of the Contracting State in which the income arises, but does

not include any income which is treated as a dividend under Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State 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.

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

7. 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, having regard to the debt-claim for which it is paid, exceeds 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 State, due regard being had to the other provisions of this Agreement.

### **Article 12 Royalties**

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. Those royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, or films, tapes and other means of image or sound reproduction, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State 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 State when the payer is a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are deductible in determining the income, profits or gains attributable to that permanent establishment, then the royalties shall be deemed to arise in the State 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, having regard to the use, right or information for which they are paid, exceeds 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 State, due regard being had to the other provisions of this Agreement.

### **Article 13 Alienation of Property**

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

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

3. Income 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 the Contracting State in which the place of effective management of the enterprise is situated.
4. Income derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Income from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

#### **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 State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of income concerned, and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c) the remuneration is not deductible in determining the taxable profits of a permanent establishment which the employer has in the other State.
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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### **Article 15 Directors' Fees**

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

#### **Article 16 Artistes and Sportspersons**

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State 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 State, may be taxed in that other State.
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 State in which the activities of the entertainer or sportsperson are exercised.

#### **Article 17 Pensions**

Pensions (including government pensions) and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.

#### **Article 18 Government Service**

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.  
b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

#### **Article 19 Students**

Payments which a student who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State 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 State, provided that such payments arise from sources outside that State.

### **Article 20 Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
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 State, carries on business in the other Contracting State 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 that case the provisions of Article 7 of this Agreement shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement from sources in the other Contracting State may also be taxed in the other Contracting State.

#### Chapter IV

#### Methods for Elimination of Double Taxation

### **Article 21 Elimination of Double Taxation**

Double taxation shall be avoided as follows:

1. In Spain, double taxation shall be avoided following either the provisions of its internal legislation or the following provisions in accordance with the internal legislation of Spain:
  - a) Where a resident of Spain derives income which, in accordance with the provisions of this Agreement, may be taxed in New Zealand, Spain shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in New Zealand. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in New Zealand.
  - b) Where in accordance with any provision of the Agreement income derived by a resident of Spain is exempt from tax in Spain, Spain may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
2. In New Zealand:

Subject to the provisions of the laws of New Zealand from time to time in force which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this article), Spanish tax paid under the laws of Spain and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in Spain shall be allowed as a credit against New Zealand tax payable in respect of that income.

#### Chapter V

#### Special Provisions

### **Article 22 Non-Discrimination**

1. Nationals of one of the States shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State 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 States.
2. The taxation on the profits, as determined in accordance with the provisions of Article 7 of a permanent establishment which an enterprise of one of the States has in the other State and which are attributable to that permanent establishment in accordance with the provisions of Article 7, shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging one of the States to grant to residents of the other State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

4. If one of the States considers that taxation measures of the other State infringe the principles set forth in this Article, the competent authorities of the States shall consult each other in an endeavour to resolve the matter.

### **Article 23 Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States 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 law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 22, to that of the Contracting State of which the person is a national. 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 State, 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 law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a meeting of representatives of the competent authorities of the Contracting States.

### **Article 24 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State 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 the first sentence. 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.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- 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 State;
- 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).

### **Article 25 Members of Diplomatic Missions and Consular Posts**

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

Chapter VI

Final Provisions

### **Article 26 Entry Into Force**

1. The Governments of the Contracting States shall notify each other that the internal procedures required by the law of each Contracting State for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force on the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

- a) In Spain:

- (i) in respect of taxes withheld at source, in relation to income derived on or after the first day of January in the calendar year next following that in which the Agreement enters into force;
  - (ii) in respect of other taxes, in relation to the income of any tax year beginning on or after the first day of January 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 the first day of the second month next following the date on which the Agreement enters into force;
  - (ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which the Agreement enters into force.

### **Article 27 Termination**

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year following the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect:

a) In Spain:

- (i) in respect of taxes withheld at source, in relation to income derived on or after the first day of January in the calendar year next following that in which the notice of termination is given;
- (ii) in respect of other taxes, in relation to the income of any tax year beginning on or after the first day of January 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 the first day of the second month 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.

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

Done in duplicate in Wellington on the 28th day of July, 2005, in the Spanish, \_\_\_\_\_, and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

### **FOR THE KINGDOM OF SPAIN:**

*Francisco Javier Rojo*  
*President of the Senate*

### **FOR THE GOVERNMENT OF NEW ZEALAND:**

*Michael Cullen*  
*Revenue Minister*

### **PROTOCOL**

At the signing of the Agreement between the Kingdom of Spain and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement.

I. With reference to Article 2:

- a) It is agreed that if New Zealand should introduce a local authority income tax this Agreement will apply to that tax.
- b) It is understood that when applying Articles 10, 11 and 12 or when a credit is given by one Contracting State for tax paid to the other Contracting State, tax or credit does not cover a penalty or interest imposed for late payment or non-compliance under the laws of either Contracting State. It is further understood that this does not affect any relief for such penalties or interest, when and if necessary, as may be agreed by mutual agreement under Article 23 or otherwise.

II. With reference to Article 4:

For the purposes of this Agreement, a person who applies for a certificate of residence will be issued with such a certificate stating the residence status of that person in a Contracting State. This certificate will, in accordance with the laws of each State, clearly manifest the person's condition of residence in the Contracting State for the purposes of the Agreement.

III. With reference to Article 10:

It is agreed that:

a) should New Zealand significantly amend the Foreign Investor Tax Credit rules in subpart LE of the Income Tax Act 1994, the New Zealand Competent Authority shall inform the Spanish Competent Authority of this amendment with a view to reviewing Article 10; and  
b) should Spain significantly amend its taxation of dividends derived by non-residents, the Spanish Competent Authority shall inform the New Zealand Competent Authority of this amendment with a view to reviewing Article 10.

When such significant amendment derives from the European Union Regulatory framework, including European Union Court decisions, the Spanish Competent Authority shall inform the New Zealand Competent Authority of this amendment with a view to reviewing, if possible, Article 10.

IV. With reference to Articles 10, 11, 12:

It is further agreed that if in any future Double Tax Agreement with any other State, being a member of the Organisation for Economic Co-operation and Development, New Zealand should limit its taxation at source of dividends, interest and royalties to a rate lower than the one provided for in any of such Articles, New Zealand shall without undue delay enter into negotiations with Spain to review the Articles with a view to providing the same treatment.

V. With reference to Articles 10, 11 and 12:

It is understood that a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of those dividends, interest or royalties.

VI. With reference to Article 20:

It is agreed that if an item of income arises to be dealt with under that Article the competent authorities of the Contracting States shall negotiate to reach a satisfactory solution as to how the item should be taxed.

VII. With reference to Article 21:

It is understood that credit is given for underlying corporation tax under the domestic laws of each Contracting State. If either Contracting State amends significantly its domestic laws relating to underlying corporation tax credits, the competent authority of that State shall inform the competent authority of the other Contracting State of those changes.

VIII. With reference to Articles 26 and 27

It is understood that the terms "income year" and "tax year" have the same meaning to 37 the extent that they both refer to the year in which income is allocated for tax purposes. The difference in terms used by each Contracting State is exclusively based, with regard to New Zealand, on matters of internal law drafting, and, with regard to the Kingdom of Spain on usual Double Tax Agreement drafting.

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

Done in duplicate in Wellington on the 28th day of July, 2005, in the Spanish, \_\_\_\_\_, and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

**FOR THE KINGDOM OF SPAIN:**

*Francisco Javier Rojo*  
*President of the Senate*

**FOR THE GOVERNMENT OF NEW ZEALAND:**

*Michael Cullen*  
*Revenue Minister*