

**Agreement between
the Government of Jersey and
the Government of New Zealand for
the Allocation of Taxing Rights with Respect to Certain Income of
Individuals and to Establish a Mutual Agreement Procedure in
Respect of Transfer Pricing Adjustments**

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

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

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

Have agreed as follows:

Article 1
Persons Covered

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

Article 2
Taxes Covered

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

- (a) in Jersey the income tax;
(hereinafter referred to as "Jersey tax").
- (b) in New Zealand, the income tax;
(hereinafter referred to as "New Zealand tax").

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent

authorities of the Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

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

Article 3

Definitions

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

- (a) "Jersey" means the Bailiwick of Jersey, including its territorial sea;
- (b) "New Zealand" means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
- (c) "competent authority" means, in the case of Jersey, the Treasury and Resources Minister or an authorised representative of the Minister and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
- (d) "Party" means Jersey or New Zealand, as the context requires;
- (e) "national", in relation to a Party, means any individual possessing the nationality or citizenship of that Party;
- (f) "person" includes an individual, a company and any other body of persons;

- (g) "tax" means Jersey tax or New Zealand tax, as the context requires; and
- (h) "transfer pricing adjustment" means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

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

Article 4

Resident

1 For the purposes of this Agreement, the term "resident of a Party" means:

- (a) in the case of Jersey, a person who is a resident of Jersey for the purposes of Jersey tax; and
- (b) in the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax.

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

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party in which the individual has an habitual abode;
- (c) if the party in which the individual has an habitual abode cannot be determined, the individual shall be deemed to be a resident only of the party of which that individual is a national;
- (d) if the individual is a national of both Parties or of neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

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

Article 5

Pensions

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

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

3 However, paragraphs 1 and 2 shall not apply where the pension, payment or other similar remuneration is not subject to tax by the party of which the individual is a resident.

Article 6 Government Service

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

(b) However, such salaries, wages and other similar remuneration shall be taxable only by the other Party if the services are rendered in that Party and the individual is a resident of that Party who did not become a resident of that Party solely for the purpose of rendering the services.

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

Article 7 Students

Payments which a student or business apprentice who is or was immediately before visiting a party a resident of the other Party and who is temporarily present in the first-mentioned Party solely for the purpose of their education or training receives for the purpose of their maintenance,

education or training shall not be taxed by that Party, provided such payments arise from sources outside that Party.

Article 8

Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments

1 Where a resident of a Party considers the actions of the other Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Party. The case shall be presented within 3 years of the first notification of the adjustment.

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

Article 9

Exchange of Information

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

Article 10
Entry into Force

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

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

Article 11
Termination

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

2 Such termination shall become effective:

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

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

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

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

For the Government of Jersey:

For the Government of New Zealand:

Senator Terry Le Sueur
Chief Minister

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