

PROTOCOL  
AMENDING  
THE AGREEMENT  
BETWEEN  
THE GOVERNMENT OF NEW ZEALAND  
AND  
THE STATES OF GUERNSEY

FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES  
AND THE ALLOCATION OF TAXING RIGHTS WITH RESPECT TO  
CERTAIN INCOME OF INDIVIDUALS

DONE AT LONDON ON 21 JULY, 2009

The Government of New Zealand and the States of Guernsey (“the Parties”), desiring to amend the Agreement between the Government of New Zealand and the States of Guernsey for the Exchange of Information with Respect to Taxes and the Allocation of Taxing Rights with Respect to Certain Income of Individuals, done at London on 21 July, 2009 (“the 2009 Agreement”),

Have agreed as follows:

ARTICLE 1

The following shall be inserted immediately after the existing fifth recital of the Preamble to the 2009 Agreement:

“Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions);”.

## ARTICLE 2

In Article 11 (Mutual Agreement Procedure) of the 2009 Agreement:

1. The first paragraph shall be deleted and replaced by the following;

“1. Where difficulties or doubts arise between the Parties regarding the implementation, application or interpretation of this Agreement, including the application of the arm's length principle under Chapter III, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.”.

2. The fourth paragraph shall be deleted and replaced by the following;

“4. Where a person considers that the actions of one or both of the Parties result or will result for that person in taxation not in accordance with the provisions of Chapter III of this Agreement, or will result in a transfer pricing adjustment not in accordance with the arm's length principle, that person may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of either Party. 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 this Agreement.”.

3. The fifth paragraph shall be deleted and replaced by the following;

“5. 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 Party, with a view to the avoidance of taxation which is not in accordance with Chapter III of this Agreement or the arm's length principle. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.”.

### ARTICLE 3

The following shall be inserted immediately after Article 11 (Mutual Agreement Procedure) of the 2009 Agreement:

#### **“Article 11A**

#### **ENTITLEMENT TO BENEFITS**

1. Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Party that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Party to which a request has been made under this paragraph will consult with the competent authority of the other Party before rejecting the request.”.

#### ARTICLE 4

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 Protocol. This Protocol shall enter into force on the date of the last notification and shall have effect from that date.