

**EXPLANATORY MEMORANDUM TO
THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX
ENFORCEMENT (TAXES ON INCOME AND CAPITAL) (NEW ZEALAND)
ORDER 2008**

2008 No. [DRAFT]

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

The draft Order brings into effect those arrangements specified in the Protocol set out in the Schedule to the draft Order.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 Type of resolution

The draft Order is subject to the affirmative resolution procedure.

- 3.2 Details of the Protocol

Further details of the Protocol amending the Double Taxation Convention scheduled to the draft Order are annexed to this memorandum.

4. **Legislative Background**

- 4.1 General

The Order is made under section 788(1) of the Income and Corporation Taxes Act 1988 (c. 1) and section 173(1) of the Finance Act 2006 (c. 25). Section 788 was amended by section 88(1) of the Finance Act 2002 (c. 23) and extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).

Section 788 provides the mechanism by which arrangements made with overseas territories for the purpose of affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character in the other territory are given effect in the United Kingdom.

Section 173 of FA 2006 provides the mechanism by which such arrangements may also include provisions about, among other things, the exchange of information foreseeably relevant to the administration, enforcement or recovery of any tax or duty.

The relevant Convention is scheduled to the Order. It is thus given domestic legislative effect.

In accordance with section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, a draft of this Order is required to be laid before and approved by a resolution of the House of Commons prior to submission to Her Majesty in Council. Section 788(10) was substituted by section 176 of the Finance Act 2006 (c. 25).

4.2 EU Legislation

This instrument does not implement EU legislation.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary (Jane Kennedy) has made the following statement regarding Human Rights:

In my view the provisions of the draft Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (New Zealand) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 Double Taxation Conventions aim to eliminate the double taxation of income or gains arising in one country and paid to residents of another country. They do this by dividing the taxing rights that each treaty partner has under its domestic law over the same income and gains. They provide additional protection for taxpayers by specific measures combating discrimination in tax treatment. More generally, Conventions benefit the taxpayer by ensuring certainty of treatment and, as far as possible, by reducing compliance burdens. Conventions also serve an Exchequer protection role by including provisions to combat avoidance and evasion — not least by measures providing for the exchange of information between revenue authorities. They also encourage and maintain international consensus on the appropriate tax treatment of cross-border economic activity and thus promote international trade and investment.

7.2 The draft Order is intended to give effect, in accordance with the legislative powers, to a Protocol to the Double Taxation Convention originally concluded in 1983 between the Governments of the United Kingdom and New Zealand and amended by a previous Protocol in 2003.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no regulatory impact on business, charities or voluntary bodies.

9. Contact

Geoff Barnard at HM Revenue & Customs (Tel: 020 7147 2734 / Email: Geoff.Barnard@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

GENERAL

All the United Kingdom's recent Double Taxation Conventions largely follow the approach adopted in the OECD's *Model Tax Convention on Income and on Capital*. This Protocol continues that approach.

NOTES ON DETAILS

ARTICLE I –

Article 25 – Exchange of information

This Article deletes the existing Article 25 of the Convention and substitutes a replacement Article 25, which is based on the standards now recommended by the OECD. It provides new rules governing the exchange of certain information concerning taxes - of every kind and description - between the competent authorities of the two countries. It requires the competent authorities to exchange information that is foreseeably relevant to the administration or enforcement of the provisions of the Convention or of the domestic laws of the two countries, insofar as the taxation is not contrary to the Convention. Each competent authority is to use its information gathering measures to obtain requested information even though it may not need the information for its own purposes, and may not decline a request solely because the information concerned is held by a bank or financial institution. No information containing trade, etc. secrets or information the disclosure of which would be contrary to public policy is to be exchanged.

ARTICLE II

Article 25A – Assistance in the collection of taxes

This Article inserts a new provision into the Convention providing the rules under which the countries may provide assistance to each other in the collection of their taxes.

Paragraph (1) sets out the principle that the countries shall be obliged to assist each other in the collection of taxes owed “revenue claim”. The assistance is not restricted by Articles 1 and 2 and the competent authorities may by mutual agreement settle the mode of application of the Article.

Paragraph (2) defines the term “revenue claim”.

Paragraph (3) provides that a revenue claim originating in one country can be accepted for the purposes of collection by the competent authority of the other country. It will then be collected in accordance with the laws applied to the enforcement and collection of revenue claims in that other country.

Paragraph (4) states that if a revenue claim is accepted for collection by the competent authority of one country from the other country, it will be subject to the measures of conservancy that are applicable in the country accepting the revenue claim.

Paragraph (5) states that a revenue claim that is accepted by one country will not be accorded any priority in that country by reason of its nature as such. It also states that a revenue claim accepted by one country shall not have the same priority that was applicable to it in the other country.

Paragraph (6) provides that proceedings relating to the existence, validity or amount of a revenue claim will not be brought before the courts (or similar body) in the other country accepting the claim. This prevents administrative or judicial bodies of the requested country from being asked to decide matters which concern whether an amount, or part thereof, is owed under the internal law of the other country.

Paragraph (7) explains the procedure when a revenue claim has been passed to the other country, but not collected or remitted to the first country, and ceases to be collectable by that country.

Paragraph (8) sets out the limitations to the obligations that can be imposed under this Article.

ARTICLE III

This Article contains the provisions governing how and when the Protocol will enter into force and take effect.

The Article states that both countries will notify each other through diplomatic channels when they have completed their respective legislative procedures. The Protocol will enter into force on the date of the later of these notifications.

The Protocol will take effect in both countries in relation to the information referred to in Article I for information that is requested or exchanged on or after the date of entry into force and in relation to revenue claims referred to in Article II for requests for assistance made on or after the date of entry into force.

ARTICLE IV

This Article provides that the Protocol will remain in force as long as the Convention remains in force.