

**SYNTHESISED TEXT
OF THE MLI AND THE CONVENTION BETWEEN
JAPAN AND NEW ZEALAND
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

This document presents the synthesised text for the application of the Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on December 10, 2012 (hereinafter referred to as “the Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Japan and New Zealand on June 7, 2017 (hereinafter referred to as “the MLI”).

This document was prepared on the basis of the reservations and notifications submitted to the Depositary (the Secretary-General of the Organisation for Economic Co-operation and Development) by Japan on September 26, 2018 and by New Zealand on June 27, 2018 respectively.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and the document does not constitute a source of law. The authentic texts of the Convention and the MLI are the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout this document in the context of the relevant provisions of the Convention.

In this document, changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as changes from “Covered Tax Agreement” to “Convention” and changes from “Contracting Jurisdiction” to “Contracting State”). Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention by replacing such descriptive language with the article and paragraph numbers or language of the existing provisions. These changes are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI.

Unless the context otherwise requires, references made to the provisions of the Convention will be understood as referring to the provisions of the Convention as modified by the provisions of the MLI.

Entry into force and entry into effect of the MLI

The MLI enters into force for Japan on January 1, 2019 and for New Zealand on October 1, 2018 and has effect as follows:

- (a) The provisions of the MLI shall have effect in each Contracting State with respect to the Convention:
 - (i) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2019; and
 - (ii) with respect to all other taxes levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after July 1, 2019.
- (b) Notwithstanding (a), Article 16 (Mutual Agreement Procedure) of the MLI shall have effect with respect to the Convention for a case presented to the competent authority of a Contracting State on or after January 1, 2019, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

CONVENTION BETWEEN
JAPAN AND NEW ZEALAND
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

Japan and New Zealand,

~~Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,~~

The following preamble text described in paragraph 1 of Article 6 of the MLI replaces the preamble language of the Convention referring to “Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,”:

Article 6 – Purpose of a Covered Tax Agreement

Intending to eliminate double taxation with respect to the taxes covered by the Convention 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 the Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

Article 1
PERSONS COVERED

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

The following paragraph 1 (as modified by paragraph 3) of Article 3 of the MLI replaces paragraph 5 of Article 4 of the Convention:

Article 3 - Transparent Entities

1. For the purposes of the Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by

that Contracting State, as the income of a resident of that Contracting State. In no case shall the provisions of this paragraph be construed to affect a Contracting State's right to tax the residents of that Contracting State.

Article 2
TAXES COVERED

1. The taxes to which this Convention shall apply are:
 - (a) in the case of Japan:
 - (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the special income tax for reconstruction;
and
 - (iv) the special corporation tax for
reconstruction;

(hereinafter referred to as "Japanese tax"); and
 - (b) in the case of New Zealand:

the income tax

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

2. This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws, within a reasonable period of time after such changes.

Article 3
GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with

international law and in which the laws relating to Japanese tax are in force;

- (b) 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;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Japan or New Zealand, as the context requires;
- (d) the term "tax" means Japanese tax or New Zealand tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons;
- (f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (g) the term "enterprise" applies to the carrying on of any business;
- (h) 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;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (k) the term "competent authority" means:

- (i) in the case of Japan, the Minister of Finance or an authorised representative of the Minister of Finance; and
 - (ii) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner of Inland Revenue; and
- (1) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of this Convention 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 laws of that Contracting State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

Article 4 RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
- (a) in the case of Japan, any person who, under the laws of Japan, is liable to tax therein by reason of that person's domicile, residence, place of head or main office or any other criterion of a similar nature; and
 - (b) in the case of New Zealand, any person who, under the laws of New Zealand, is liable to tax as a resident of New Zealand.

The Government of a Contracting State or a political subdivision or local authority thereof is also a resident of that Contracting State for the purposes of the Convention. A person is not a resident of a Contracting State for the purposes of the Convention if the person is liable to tax in that Contracting State in respect only of income from sources in that Contracting 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 only of the Contracting State in which a

permanent home is available to the individual; if a permanent home is available to the individual in both Contracting States, the individual shall be deemed to be a resident only of the Contracting State with which the individual's personal and economic relations are closer (centre of vital interests);

- (b) if the Contracting State in which the individual's centre of vital interests is situated cannot be determined, or if a permanent home is not available to the individual in either Contracting State, the individual shall be deemed to be a resident only of the Contracting State in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both Contracting States or in neither of them, the individual shall be deemed to be a resident only of the Contracting State of which the individual is a national;
- (d) if the individual is a national of both Contracting 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 the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention, having regard to the place of its head or main office, its place of effective management and any other relevant factors. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of its claiming any benefits provided by the Convention, except those provided by Article 25.~~

The following paragraph 1 (as modified by subparagraph e) of paragraph 3) of Article 4 of the MLI replaces paragraph 3 of Article 4 of the Convention and paragraph 3 of the Protocol to the Convention:

Article 4 – Dual Resident Entities

1. Where by reason of the provisions of paragraph 1 of Article 4 of the Convention a person other than an individual is a resident of both Contracting States, the

competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention.

4. (a) Where under this Convention any income is relieved from tax in a Contracting State and, under the laws in force in the other Contracting State, an individual, in respect of that income, is taxed by reference to the amount thereof that is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under the Convention in the first-mentioned Contracting State shall apply only to so much of that income as is taxed in the other Contracting State.
- (b) Where under this Convention any income is relieved from tax in a Contracting State and, under the laws in force in the other Contracting State, an individual, in respect of that income, is exempt from tax by virtue of being a temporary resident of that other Contracting State within the meaning of the applicable law of that other Contracting State, then the relief to be allowed under the Convention in the first-mentioned Contracting State shall not apply to the extent that that income is exempt from tax in the other Contracting State.

~~5. For the purposes of applying this Convention:~~

~~(a) an item of income:~~

~~(i) derived from a Contracting State through an entity that is organised in the other Contracting State; and~~

~~(ii) treated as the income of the beneficiaries, members or participants of that entity under the tax law of that other Contracting State;~~

~~shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that entity who is a resident of~~

~~that other Contracting State, to the extent that such beneficiaries, members or participants are residents of that other Contracting State and satisfy any other conditions specified in the Convention, without regard to whether the income is treated as the income of such beneficiaries, members or participants under the tax law of the first mentioned Contracting State.~~

~~(b) an item of income:~~

~~(i) derived from a Contracting State through an entity that is organised in the other Contracting State; and~~

~~(ii) treated as the income of that entity under the tax law of that other Contracting State,~~

~~shall be eligible for the benefits of the Convention that would be granted to a resident of that other Contracting State, without regard to whether the income is treated as the income of the entity under the tax law of the first mentioned Contracting State, if such entity is a resident of that other Contracting State and satisfies any other conditions specified in the Convention.~~

~~(c) an item of income:~~

~~(i) derived from a Contracting State through an entity that is organised in a state other than the Contracting States; and~~

~~(ii) treated as the income of the beneficiaries, members or participants of that entity under the tax law of the other Contracting State,~~

~~shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that entity who is a resident of that other Contracting State, to the extent that such beneficiaries, members or participants are residents of that other Contracting State and satisfy any other conditions specified in the Convention, without regard to whether the income is treated as the income of such beneficiaries, members or participants under the tax law of the first mentioned Contracting State or the state where the entity is organised.~~

~~(d) an item of income:~~

~~(i) derived from a Contracting State through an entity that is organised in a state other than the Contracting States; and~~

~~(ii) treated as the income of that entity under the tax law of the other Contracting State,~~

~~shall not be eligible for the benefits of the Convention.~~

~~(c) an item of income:~~

~~(i) derived from a Contracting State through an entity that is organised in that Contracting State; and~~

~~(ii) treated as the income of that entity under the tax law of the other Contracting State,~~

~~shall not be eligible for the benefits of the Convention.¹~~

Article 5 PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, 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 construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

¹ Paragraph 5 of Article 4 of the Convention is replaced by paragraph 1 (as modified by paragraph 3) of Article 3 of the MLI (see [page 3](#)).

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, 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 a period or periods exceeding in the aggregate 90 days in any twelve month period, it carries on activities (including the operation of substantial equipment) in that Contracting State which consist of, or which are connected with, the exploration for or the exploitation of natural resources, including standing timber, situated in that Contracting State.

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

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

the activities carried on in that other Contracting State in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other Contracting State, 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. (a) The duration of activities under paragraphs 3, 4 and 5 shall be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises

provided that the activities carried on in that Contracting State by an enterprise are connected with the activities carried on in that Contracting State by its associated enterprise.

- (b) The period during which two or more associated enterprises are carrying on concurrent activities shall be counted only once for the purpose of determining the duration of activities.
- (c) For the purposes of this Article, an enterprise shall be deemed to be associated with another enterprise if:
 - (i) an enterprise participates directly or indirectly in the management, control or capital of the other enterprise; or
 - (ii) the same persons participate directly or indirectly in the management, control or capital of the enterprises.

~~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.~~

The following paragraph 2 of Article 13 of the MLI replaces paragraph 7 of Article 5 of the Convention:

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

2. Notwithstanding the provisions of Article 5 of the Convention, the term "permanent establishment" shall be deemed not to include:

- a)
 - i) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to the Convention:

Article 13 – Artificial Avoidance of Permanent Establishment Status through the

Specific Activity Exemptions

4. Paragraph 7 of Article 5 of the Convention shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Convention; or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

8. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom the provisions of paragraph 9 apply - is acting on behalf of an enterprise and:

- ~~(a) has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise; or~~
- (b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise which participates in the management, control or capital of the person, and any of those goods or merchandise are sold to a resident of that Contracting State,

that enterprise shall be deemed to have a permanent establishment in that Contracting 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 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.

The following paragraph 1 of Article 12 of the MLI replaces subparagraph (a) of paragraph 8 of Article 5 of the Convention:

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies

1. Notwithstanding the provisions of Article 5 of the Convention, but subject to paragraph 2 of Article 12 of the MLI, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise; or
- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting State, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of Article 5 of the Convention.

~~9. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting 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.~~

The following paragraph 2 of Article 12 of the MLI replaces paragraph 9 of Article 5 of the Convention:

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies

2. Paragraph 1 of Article 12 of the MLI shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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

The following paragraph 1 of Article 15 of the MLI applies to the Convention:

Article 15 – Definition of a Person Closely Related to an Enterprise

1. For the purposes of the provisions of Article 5 of the Convention, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Article 6
INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture, forestry or fishing) situated in the other Contracting State may be taxed in that other Contracting 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, rights to explore for or exploit natural resources or standing timber, and rights to variable or fixed payments either as consideration for or in respect of the exploration for or the exploitation of, or the right to explore for or exploit, natural resources or standing timber; ships 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.

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

Article 7 BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 that other Contracting 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 Contracting 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 of this Article, 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 is beneficially entitled, whether directly or through one or more interposed trusts, to a share of the profits derived from business 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) in its capacity as trustee; and
- (b) in relation to the carrying on of the business, that trustee, in accordance with the principles stated in Article 5, has a permanent establishment in that other Contracting State,

the business carried on by the trustee shall be deemed to be a business carried on in that other Contracting State by that resident through a permanent establishment situated therein and the share of the 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. Notwithstanding the other provisions of this Article, an enterprise of a Contracting State that derives income from any form of insurance, other than life insurance, in the form of premiums paid for the insurance of risks situated in that other Contracting State, may be taxed on such income in the other Contracting State in accordance with the laws of that other Contracting State which are in force on the date of signature of this Convention, or are substantially similar in general principle to any such provision but are enacted and have effect after the date of signature of the Convention.

Article 8
SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of Article 2, provided that no political subdivision or local authority of New Zealand levies a tax similar to the local inhabitant taxes or the enterprise tax in Japan in respect of the operation of ships or aircraft in international traffic carried on by an enterprise of Japan, an enterprise of New Zealand shall be exempt from the local inhabitant taxes and the enterprise tax in Japan in respect of the operation of ships or aircraft in international traffic.

3. Notwithstanding the provisions of paragraph 1, profits referred to in that paragraph which are derived by an enterprise of a Contracting State from carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped or embarked in the other Contracting State and are discharged at a place in that other Contracting State may be taxed in that other Contracting State.

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

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 Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.~~

The following paragraph 1 of Article 17 of the MLI replaces paragraph 2 of Article 9 of the Convention:

Article 17 – Corresponding Adjustments

1. Where a Contracting State includes in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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 the Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. Notwithstanding the provisions of paragraph 1, a Contracting State shall not change the profits of an enterprise of that Contracting State in the circumstances referred to in that paragraph after ten years from the end of the taxable year in which the profits that would be subjected to such change would, but for the conditions referred to in that paragraph, have accrued to that enterprise. The provisions of this paragraph shall not apply in the case of fraud or wilful default.

Article 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting 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 Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State and is a company that has owned directly or indirectly, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 10 per cent of the voting power of the company paying the dividends and the company that is the beneficial owner of the dividends:

- (a) is a qualified person by reason of the provisions of subparagraph (c) of paragraph 2 of Article 22;
- (b) has at least 50 per cent of its voting power in the aggregate owned directly or indirectly by five or fewer companies referred to in subparagraph (a); or
- (c) is granted benefits with respect to those dividends under paragraph 5 of Article 22.

4. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The provisions of paragraph 3 shall not apply in the case of dividends paid by a company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in the Contracting State of which the company is a resident.

6. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the tax laws of the Contracting State of which

the company making the distribution is a resident.

7. The provisions of paragraphs 1, 2 and 3 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.

8. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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 Contracting 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 Contracting State.

Article 11 INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, 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 shall be taxable only in the other Contracting State if:

- (a) the interest is beneficially owned by the Government of that other Contracting State, a political subdivision or local authority thereof, or the central bank of that other Contracting State or any institution wholly owned by that Government;
- (b) the interest is beneficially owned by a resident of that other Contracting State with respect to

debt-claims guaranteed, insured or indirectly financed by the Government of that other Contracting State, a political subdivision or local authority thereof, or the central bank of that other Contracting State or any institution wholly owned by that Government; or

- (c) the interest is beneficially owned by a resident of the other Contracting State 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.

4. For the purposes of paragraph 3, the terms "the central bank" and "institution wholly owned by that Government" mean:

- (a) in the case of Japan:
 - (i) the Bank of Japan;
 - (ii) the Japan Bank for International Cooperation;
 - (iii) the Japan International Cooperation Agency; and
 - (iv) the Nippon Export and Investment Insurance;
- (b) in the case of New Zealand:

the Reserve Bank of New Zealand;
- (c) such other similar institution the capital of which is wholly owned by the Government of a Contracting State as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes.

5. Notwithstanding paragraph 3, interest referred to in subparagraph (c) of that paragraph may be taxed in the Contracting State 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 signature of this Convention 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 an arrangement involving 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, and all other income that is subjected to the same taxation treatment as income from money lent by the tax laws of the Contracting State in which the income arises. Income dealt with in Article 10 shall not be regarded as interest for the purposes of this Convention.

7. 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.

8. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting 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 borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State 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, 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 Convention.

Article 12 ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State, 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, patent, design or model, plan, secret formula or process, trademark or other like property or right;
- (b) the supply of scientific, technical, industrial or commercial knowledge or information;
- (c) the supply of 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) or any such knowledge or information as is mentioned in subparagraph (b);
or
- (d) 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 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 resident of that Contracting State. 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 borne by such permanent establishment, then the royalties shall be deemed to arise in the Contracting 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 what they are paid for, 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 Convention.

Article 13 ALIENATION OF PROPERTY

1. Income, profits or gains 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 Contracting State.

~~2. Income, profits or gains derived by a resident of a Contracting State from the alienation of shares or interests in a company, partnership or trust deriving at least 50 per cent of the value of its property directly or indirectly from immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State, unless the relevant class of the shares or the interests is traded on a recognised stock exchange specified in subparagraph (c) of paragraph 6 of Article 22 and the resident and persons related or connected to that resident own in the aggregate 5 per cent or less of that class of the shares or the interests.~~

The following paragraph 4 of Article 9 of the MLI replaces paragraph 2 of Article 13 of

the Convention:

*Article 9 – Capital Gains from Alienation of Shares or Interests of Entities
Deriving their Value Principally from Immovable Property*

4. For purposes of the Convention, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property situated in that other Contracting State.

3. Where

- (a) the Government of Japan (including the Deposit Insurance Corporation of Japan) provides, pursuant to the laws of Japan concerning failure resolution involving imminent insolvency of financial institutions, substantial financial assistance to a financial institution that is a resident of Japan; and
- (b) a resident of New Zealand acquires shares in the financial institution from the Government of Japan,

gains derived by the resident of New Zealand from the alienation of such shares may be taxed in Japan, provided that the alienation is made within five years from the first date on which such financial assistance was provided.

4. Income, profits or gains from the alienation of any property, other than immovable 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 such income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Contracting State.

5. Income, profits or gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

6. Income, profit or gains from the alienation of any

property other than that referred to in the preceding paragraphs of this Article 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 Contracting 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 Contracting 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 Contracting State if:

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment which the employer has in that other Contracting 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 by an enterprise of a Contracting State may be taxed in that Contracting State.

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 Contracting State.

Article 16
ENTERTAINERS 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 Contracting 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

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, including payments under the social security legislation of a Contracting State, paid to a resident of a Contracting State shall be taxable only in that Contracting State.

Article 18
GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State or political subdivision or local authority shall be taxable only in that Contracting 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 other Contracting State and the individual is a resident of that other Contracting State who:
 - (i) is a national of that other Contracting State; or
 - (ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds to which contributions are made or created by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State or political subdivision or local authority shall be taxable only in that Contracting State.
 - (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 19 STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of that person's education or training receives for the purpose of that person's maintenance, education or training shall not be taxed in the first-mentioned Contracting State, provided that such payments arise from sources outside the first-mentioned Contracting State. The exemption provided by this Article shall apply to a business apprentice only for a period not exceeding one year from the date on which the person first begins that person's training in the first-mentioned Contracting State.

Article 20 SILENT PARTNERSHIP

Notwithstanding any other provisions of this Convention, any income and gains derived by a silent partner in respect of a silent partnership (Tokumei Kumiai) contract or other similar contract may be taxed in the Contracting State in which such income and gains arise and according to the laws of that Contracting State.

Article 21 OTHER INCOME

1. Items of income of a resident of a Contracting State,

wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting 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 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 State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other Contracting State.

Article 22 LIMITATION ON BENEFITS

1. Except as otherwise provided in this Article, a resident of a Contracting State that derives income described in paragraph 3 of Article 11 or Article 13 from the other Contracting State shall be entitled to the benefits granted for a taxable year by the provisions of those paragraphs or Articles only if such resident is a qualified person as defined in paragraph 2 and satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits.

2. A resident of a Contracting State is a qualified person for a taxable year only if such resident is either:

- (a) an individual;
- (b) a qualified governmental entity;
- (c) a company, if its principal class of shares is listed or registered on a recognised stock exchange specified in clause (i) or (ii) of subparagraph (c) of paragraph 6 and is regularly traded on one or more recognised stock exchanges;
- (d) a pension fund, provided that as of the end of the prior taxable year more than 50 per cent of its beneficiaries, members or participants are individuals who are residents of either Contracting State;
- (e) an organisation established under the law of that

Contracting State and operated exclusively for a religious, charitable, educational, scientific, artistic, cultural or public purposes, provided that all or part of its income may be exempt from tax under the domestic law of that Contracting State; or

- (f) a person other than an individual, if residents of either Contracting State that are qualified persons by reason of subparagraph (a), (b), (c), (d) or (e) of this paragraph own, directly or indirectly, at least 50 per cent of the voting power or other beneficial interests of the person.

3. Where the provisions of subparagraph (f) of paragraph 2 apply:

- (a) in respect of taxation by withholding at source, a resident of a Contracting State shall be considered to satisfy the conditions described in that subparagraph for the taxable year in which payment of an item of income is made if such resident satisfies those conditions during the twelve month period preceding the date of the payment;
- (b) in all other cases, a resident of a Contracting State shall be considered to satisfy the conditions described in that subparagraph for a taxable year if such resident satisfies those conditions on at least half the days of the taxable year.

4. (a) Notwithstanding that a resident of a Contracting State may not be a qualified person, that resident shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 11 or Article 13 with respect to an item of income described in those paragraphs or Articles derived from the other Contracting State if:

- (i) the resident is carrying on business in the first-mentioned Contracting State (other than the business of making or managing investments for the resident's own account, unless the business is banking, insurance or securities business carried on by a bank, insurance company or securities dealer);
- (ii) the income derived from that other Contracting State is derived in connection

with, or is incidental to, that business;
and

- (iii) that resident satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits.
- (b) If a resident of a Contracting State derives an item of income from a business carried on by that resident in the other Contracting State or derives an item of income arising in the other Contracting State from a person that has with the resident a relationship described in subparagraph (a) or (b) of paragraph 1 of Article 9, the conditions described in subparagraph (a) of this paragraph shall be considered to be satisfied with respect to such item of income only if the business carried on in the first-mentioned Contracting State is substantial in relation to the business carried on in that other Contracting State. Whether such business is substantial for the purpose of this paragraph shall be determined on the basis of all the facts and circumstances.
- (c) In determining whether a person is carrying on business in a Contracting State under subparagraph (a) of this paragraph, the business conducted by a partnership in which that person is a partner and the business conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one owns, directly or indirectly, at least 50 per cent of the beneficial interests in the other (or, in the case of a company, at least 50 per cent of the voting power of the company) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interests (or, in the case of a company, at least 50 per cent of the voting power of the company) in each person. In any case, a person shall be considered to be connected to another if, on the basis of all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

5. A resident of a Contracting State that is neither a qualified person nor entitled under paragraph 4 to the benefits granted by the provisions of paragraph 3 of Article 11 or Article 13 with respect to an item of income described in those paragraphs or Articles, or is a company that is not entitled to the benefits of paragraph 3 of Article 10 because the company does not meet the

requirements of subparagraphs (a) or (b) of paragraph 3 of Article 10, shall nevertheless be granted such benefits if the competent authority of the other Contracting State determines, in accordance with its domestic law or administrative practice, that the establishment, acquisition or maintenance of such resident and the conduct of its operations are considered as not having the obtaining of such benefits as one of the principal purposes.

6. For the purposes of this Article:

- (a) the term "qualified governmental entity" means the Government of a Contracting State, any political subdivision or local authority thereof, the Bank of Japan, the Reserve Bank of New Zealand or a person that is wholly owned, directly or indirectly, by the Government of a Contracting State or a political subdivision or local authority thereof;
- (b) the term "principal class of shares" means the class or classes of shares of a company which represent a majority of the voting power of the company;
- (c) the term "recognised stock exchange" means:
 - (i) any stock exchange established by a Financial Instruments Exchange or an approved-type financial instruments firms association under the terms of the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
 - (ii) the securities markets (other than the New Zealand Debt Market) operated by the New Zealand Exchange Limited and any other New Zealand securities exchange recognised under the laws of New Zealand; and
 - (iii) any other stock exchange which the competent authorities of the Contracting States agree to recognise for the purposes of this Article; and
- (d) the term "pension fund" means any person that:
 - (i) is established under the law of a Contracting State; and
 - (ii) is operated principally to administer or provide pensions, retirement benefits or

other similar remuneration or to earn income for the benefit of other pension funds.

The following paragraphs 1 through 3 of Article 10 of the MLI apply to the Convention:

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

1. **Where:**

- a) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and
- b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits of the Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Convention.

2. Paragraph 1 shall not apply if the income derived from the other Contracting State described in paragraph 1 is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

3. If benefits under the Convention are denied pursuant to paragraph 1 with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2. The

competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

~~Article 23~~
~~LIMITATION OF RELIEF~~

~~No relief shall be available under this Convention if it was the main purpose of any person concerned with the creation or assignment of any right or property in respect of which the income is paid or derived to take advantage of the Convention by means of that creation or assignment.~~

The following paragraph 1 of Article 7 of the MLI replaces Article 23 of the Convention:

Article 7 – Prevention of Treaty Abuse

1. Notwithstanding any provisions of the Convention, a benefit under the Convention 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 the Convention.

Article 24
ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, where a resident of Japan derives income from New Zealand which may be taxed in New Zealand in accordance with the provisions of this Convention, the amount of New Zealand tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

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), Japanese tax paid under the laws of Japan and consistent with this Convention, in respect of income derived by a resident of New Zealand from sources in Japan (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 25
NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting 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 Contracting State in the same circumstances, in particular with respect to residence, are or may be subjected. The provisions of this paragraph shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities in similar circumstances. The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting 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. 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 State to a resident of the other Contracting State shall, for the purposes 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 Contracting State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting 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

Contracting State in similar circumstances are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 26
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 Convention, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident or, if that person's case comes under paragraph 1 of Article 25, to that of the Contracting State of which that person is a national.~~

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 26 of the Convention:

Article 16 – Mutual Agreement Procedure

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 the Convention, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of either Contracting State.

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 Convention.

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 provisions of this Convention. 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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States 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 of this Article.

5. Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Contracting State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these Contracting States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

Article 27 EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws 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 Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting 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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.

3. In no case shall the provisions of paragraphs 1 and 2 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.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State 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 State 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 State 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 28
ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2.

2. The term "revenue claim" as used in this Article means an amount owed in respect of the taxes covered by Article 2 and in addition, the following taxes imposed by the Contracting States, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount:

(a) in the case of Japan:

(i) the consumption tax;

(ii) the inheritance tax; and

(iii) the gift tax;

(b) in the case of New Zealand:

the goods and services tax.

3. When a revenue claim of a Contracting State is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, that revenue claim shall, at the request of the competent authority of that Contracting State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other Contracting State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other Contracting State that met the conditions allowing that other Contracting State to make a request under this paragraph.

4. When a revenue claim of a Contracting State is a claim in respect of which that Contracting State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that Contracting State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other Contracting State shall take measures of conservancy in respect of that revenue claim in accordance with the

provisions of its laws as if the revenue claim were a revenue claim of that other Contracting State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Contracting State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that Contracting State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Contracting State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that Contracting State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Notwithstanding the provisions of paragraph 5, acts carried out by a Contracting State in the collection of a revenue claim accepted by that Contracting State for purposes of paragraph 3 or 4, which, if they were carried out by the other Contracting State, would have the effect of suspending or interrupting the time limits applicable to the revenue claim according to the laws of that other Contracting State, shall have such effect under the laws of that other Contracting State. The first-mentioned Contracting State shall inform the other Contracting State about such acts.

7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

8. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned Contracting State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned Contracting State that is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned Contracting State in respect of which that Contracting State may, under its laws, take measures of conservancy

with a view to ensure its collection

the competent authority of the first-mentioned Contracting State shall promptly notify the competent authority of the other Contracting State of that fact and, at the option of the other Contracting State, the first-mentioned Contracting State shall either suspend or withdraw its request.

9. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy;
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that Contracting State is clearly disproportionate to the benefit to be derived by the other Contracting State.

10. Before assistance is lent under the provisions of this Article, the competent authorities of both Contracting States shall agree upon the mode of application of this Article, including an agreement to ensure comparable levels of assistance to each of the Contracting States. In particular, the competent authorities of both Contracting States shall agree on a limit to the number of applications for assistance that a Contracting State may make in a particular year, as well as a minimum monetary threshold for a revenue claim for which assistance is sought, and procedural rules related to the remittance of amounts collected pursuant to the provisions of this Article.

Article 29

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention 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.

Article 30
HEADINGS

The headings of the Articles of this Convention are inserted for convenience of reference only and shall not affect the interpretation of the Convention.

Article 31
ENTRY INTO FORCE

1. This Convention shall be approved in accordance with the legal procedures of each of the Contracting States and shall enter into force on the thirtieth day after the date of exchange of diplomatic notes indicating such approval.

2. This Convention shall be applicable:

(a) in the case of Japan:

(i) with respect to taxes on income withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the Convention enters into force;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the Convention enters into force; and

(iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after 1 January in the calendar year next following that in which the Convention enters into force; and

(b) in the case of New Zealand:

(i) with respect to taxes on income withheld at source, for amounts paid or credited on or after 1 January in the calendar year next following that in which the Convention enters into force;

(ii) with respect to taxes on income which are not withheld at source, for any income year beginning on or after 1 April next following the date on which the Convention enters into force; and

(iii) with respect to other taxes, as regards

taxes for any taxable period beginning on or after 1 January in the calendar year next following that in which the Convention enters into force.

3. The Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Wellington on 30 January, 1963, as amended by the Protocol signed at Wellington on 22 March, 1967 (hereinafter in this Article referred to as "the prior Convention") shall cease to be applicable from the date upon which this Convention applies in respect of the taxes to which the Convention applies in accordance with the provisions of paragraph 2 of this Article.

4. The prior Convention shall terminate on the last date on which it applies in accordance with the provisions of the preceding paragraphs of this Article.

Article 32 TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

(a) in the case of Japan:

- (i) with respect to taxes on income withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;
- (ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and
- (iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and

(b) in the case of New Zealand:

- (i) with respect to taxes on income withheld at

source, for amounts paid or credited on or after 1 January in the calendar year next following that in which the notice is given;

- (ii) with respect to taxes on income which are not withheld at source, 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; and
- (iii) with respect to other taxes, as regards taxes for any taxable period beginning on or after 1 January in the calendar year next following that in which the notice is given.

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

DONE in duplicate at Tokyo this tenth day of December, 2012, in the Japanese and English languages, both texts being equally authentic.

FOR JAPAN

榛葉賀津也

FOR NEW ZEALAND

Mark Sinclair

Protocol

At the signing of the Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Convention"), Japan and New Zealand have agreed upon the following provisions, which shall form an integral part of the Convention:

1. It is understood that:

- (a) Except to the extent provided in subparagraph (b), the Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article 4 of the Convention).
- (b) The provisions of subparagraph (a) shall not affect the benefits conferred by a Contracting State under the Convention in accordance with paragraphs 2 and 3 of Article 9, and Articles 18, 19, 24, 25, 26 and 29 of the Convention.

2. With reference to paragraphs 1 and 2 of Article 2 of the Convention:

The term "Japanese tax" or "New Zealand tax" shall not include any amount which represents a penalty or interest imposed under the laws of Japan or New Zealand, respectively, relating to the taxes to which the Convention applies.

~~3. With reference to paragraph 3 of Article 4 of the Convention:~~

~~It is understood that the term "any other relevant factors" includes:~~

- ~~(a) where the senior day-to-day management is carried on;~~
- ~~(b) which Contracting State's law governs the legal status;~~
- ~~(c) where the accounting records are held; and~~
- ~~(d) where business is carried on.²~~

4. With reference to paragraph 4 of Article 5 of the

² Paragraph 3 of the Protocol to the Convention is replaced by paragraph 1 (as modified by subparagraph e) of paragraph 3) of Article 4 of the MLI (see [page 7](#)).

Convention:

- (a) It is understood that an enterprise of a Contracting State shall not be considered to operate equipment in the other Contracting State where the enterprise leases equipment under a lease contract that is solely for the provision of equipment, including a bareboat lease contract.
- (b) It is understood that the factors of size, quantity or value of equipment or the role of equipment in income producing activities are relevant in determining whether the equipment is substantial on the basis of the facts and circumstances of each particular case.
- (c) It is understood that the term "substantial equipment" may include oil or drilling rigs, platforms and other structures used in the petroleum or mining industry.

5. With reference to subparagraph (a) of paragraph 6 of Article 7 of the Convention:

It is understood that in the case of Japan the term "a trust which is treated as a company for tax purposes" means a trust, the trustee of which is subject to tax in respect of profits derived from business carried on by the use of trust estate.

6. With reference to Articles 10, 11 and 12 of the Convention:

It is understood that in determining, for the purposes of those Articles, whether dividends, interest or royalties are beneficially owned by a resident of New Zealand:

- (a) dividends, interest or royalties arising in Japan in respect of which a trustee who is a resident of New Zealand is subject to tax in New Zealand;
or
- (b) dividends arising in Japan in respect of which a trustee who is a resident of New Zealand would be subject to tax in New Zealand but for an application of an exemption that applies generally to those dividends under the law of New Zealand,

shall be treated as being beneficially owned by that trustee.

7. With reference to paragraph 3 of Article 10 of the Convention:

If, in any future tax treaty with any other state, New Zealand should provide more favourable treatment of dividends with respect to the relevant conditions, New Zealand shall without undue delay inform Japan and shall enter into negotiations with Japan with a view to providing the same treatment.

8. With reference to paragraph 6 of Article 10 of the Convention:

It is understood that the term "dividends" includes, in the case of New Zealand, income in relation to profit-related debentures, substituting debentures and stapled debt securities as defined in sections FA 2 and FA 2B of the Income Tax Act 2007 or any substantially similar provision which is enacted and has effect after the date of signature of the Convention.

9. With reference to paragraph 3 and 4 of Article 11 of the Convention:

It is understood that the New Zealand Export Credit Office is a part of the Government of New Zealand.

10. With reference to paragraph 5 of Article 11 of the Convention:

It is understood that the term "arrangement involving back-to-back loans" would cover, inter alia, any kind of arrangement structured in such a way that a financial institution which is a resident of a Contracting State receives interest arising in the other Contracting State and the financial institution pays an equivalent interest to another person who is a resident of the first-mentioned Contracting State and, if it received the interest directly from the other Contracting State, would not be entitled to the exemption from tax with respect to that interest in that other Contracting State.

11. With reference to Article 11 of the Convention:

If, in any future tax treaty with any other state, New Zealand should provide more favourable treatment of interest derived by financial institutions, New Zealand shall without undue delay inform Japan and shall enter into negotiations with Japan with a view to providing the same treatment.

12. With reference to Articles 11, 12 and 14 of the Convention:

The reference to the term "borne by" is also applicable to interest, royalties or remuneration that is deductible in determining the profits attributable to a permanent establishment.

13. With reference to subparagraph (d) of paragraph 3 of Article 12 of the Convention:

It is understood that the term "forbearance in respect of the use or supply of any property or right" applies to cases where the holder of any property or right receives a payment as consideration for not making such property or right available to another person.

14. With reference to Article 13 of the Convention:

It is understood that paragraph 1 of Article 13 of the Convention shall apply to income, profits or gains derived by a resident of a Contracting State from the alienation of the interests in a partnership or trust to the extent that the income, profits or gains is treated for the purposes of the taxation laws of the other Contracting State as the income, profits or gains derived from the alienation of immovable property referred to in Article 6 of the Convention situated in that other Contracting State.

15. With reference to Article 25 of the Convention:

It is confirmed that the provisions of Article 25 of the Convention shall not affect the provisions of the taxation laws of New Zealand concerning:

- (a) Subpart FE of the Income Tax Act 2007 which deals with thin capitalisation;
- (b) Section CW 10 of the Income Tax Act 2007 which deals with an inter-corporate dividend exemption for wholly-owned groups;
- (c) Subpart FM of the Income Tax Act 2007 which deals with consolidated groups;
- (d) Section EB 5 of the Income Tax Act 2007 which deals with transfers of trading stock within a wholly-owned group;
- (e) Subpart IC of the Income Tax Act 2007 which deals with loss offsets between group companies;
- (f) Subpart FO of the Income Tax Act 2007 which deals with amalgamation of companies; and

- (g) Any provision adopted after the date of signature of the Convention which is substantially similar in purpose or intent to a provision covered by this paragraph, or is otherwise agreed between the Governments of the Contracting States through an exchange of diplomatic notes,

provided that any such provision does not allow for different treatment of residents of Japan as compared with the treatment of residents of any third state.

16. With reference to paragraph 5 of Article 26 of the Convention:

- (a) The competent authorities shall by mutual agreement establish a procedure in order to ensure that an arbitration decision will be implemented within two years from a request for arbitration as referred to in paragraph 5 of Article 26 of the Convention unless actions or inaction of a person directly affected by the case presented pursuant to that paragraph hinder the resolution of the case or unless the competent authorities and that person agree otherwise.
- (b) An arbitration panel shall be established in accordance with the following rules:
 - (i) An arbitration panel shall consist of three arbitrators with expertise or experience in international tax matters.
 - (ii) Each competent authority shall appoint one arbitrator. The two arbitrators appointed by the competent authorities shall appoint the third arbitrator who serves as the chair of the arbitration panel in accordance with the procedures agreed by the competent authorities.
 - (iii) All arbitrators shall not be employees of the tax authorities of the Contracting States, nor have had dealt with the case presented pursuant to paragraph 1 of Article 26 of the Convention in any capacity. Unless otherwise agreed by the competent authorities of the Contracting States, the third arbitrator shall not be a national of either Contracting State, nor have had the arbitrator's usual place of residence in either Contracting State, nor have been employed by either Contracting State.

- (iv) The competent authorities shall ensure that all arbitrators and their staff agree, in statements sent to each competent authority, prior to their acting in an arbitration proceeding, to abide by and be subject to the same confidentiality and non-disclosure obligations described in paragraph 2 of Article 27 of the Convention and in the applicable domestic laws of the Contracting States.
- (v) Each competent authority shall bear the cost of its appointed arbitrator and its own expenses. The cost of the chair of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the competent authorities in equal shares.
- (c) The competent authorities shall provide the information necessary for the arbitration decision to all arbitrators and their staff without undue delay.
- (d) An arbitration decision shall be treated as follows:
 - (i) An arbitration decision has no formal precedential value.
 - (ii) An arbitration decision shall be final, unless that decision is found to be unenforceable by the courts of one of the Contracting States due to a violation of paragraph 5 of Article 26 of the Convention, of this paragraph or of any procedural rule determined in accordance with subparagraph (a) of this paragraph that may reasonably have affected the decision. If the decision is found to be unenforceable due to the violation, the decision shall be considered not to have been made.
- (e) Where, at any time after a request for arbitration has been made and before the arbitration panel has delivered a decision to the competent authorities and the person who made the request for arbitration, the competent authorities have solved all the unresolved issues submitted to the arbitration, the case shall be considered as resolved pursuant to paragraph 2 of Article 26 of the Convention and no arbitration

decision shall be provided.

17. With reference to paragraph 5 of Article 27 of the Convention:

It is understood that a Contracting State may decline to supply information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the domestic law of that Contracting State.

18. With reference to Article 28 of the Convention:

(a) It is understood that in the case of New Zealand the collection of a revenue claim is subject to Part 10A of the Tax Administration Act 1994 or any legislation which replaces those provisions after the date of signature of the Convention.

(b) In no case shall the provisions of Article 28 of the Convention be construed so as to allow a Contracting State to request assistance from the other Contracting State in the collection of a revenue claim with respect to which the first-mentioned Contracting State would not be able to provide such assistance under the laws or in the normal course of administrative practices of the first-mentioned Contracting State if the request for such assistance were made to the first-mentioned Contracting State.

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

DONE in duplicate at Tokyo this tenth day of December, 2012, in the Japanese and English languages, both texts being equally authentic.

FOR JAPAN

榛葉賀津也

FOR NEW ZEALAND

Mark Sinclair