

## PROTOCOL

At the moment of signing the Agreement with respect to Taxes on Income and on Capital, this day concluded between the Republic of Austria and New Zealand, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

### 1. With reference to Article 2:

It is understood that the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State. Notwithstanding the preceding sentence, if the competent authorities of both Contracting States agree to adjust a transfer price pursuant to a mutual agreement procedure under Article 24, interest and penalties associated with that transaction can form part of the mutual agreement procedure.

### 2. With reference to Article 5:

For the purposes of determining the duration of activities under paragraphs 3 and 4, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

### 3. With reference to Article 6:

The term "immovable property" includes 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 exploitation of or the right to explore for or exploit natural resources or standing timber.

### 4. With reference to Article 7:

Where:

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

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.

### 5. With reference to Articles 10, 11 and 12:

If, in an agreement for the avoidance of double taxation that is made, after the date of signature of this Agreement, between New Zealand and a third State, being a State that is a member of the Organization for Economic Co-operation and Development, New Zealand agrees to limit the rate of tax:

- (a) on dividends paid by a company which is a resident of New Zealand for the

purposes of New Zealand tax to which a company that is a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 10; or

- (b) on interest arising in New Zealand to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 11; or
- (c) on royalties arising in New Zealand to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 12,

the Government of New Zealand shall immediately inform the Government of Austria in writing through the diplomatic channel and shall enter into negotiations with the Government of Austria to review the relevant provisions in order to provide the same treatment for Austria as that provided for the third State.

6. With reference to Article 11:

It is understood that, under New Zealand's Approved Issuer Levy legislation in force at the time of signing this agreement, an approved New Zealand resident borrower is, in relation to a registered security, able to pay interest to a non-resident that is not associated with the borrower and deduct zero percent non-resident withholding tax. Under these rules, approved borrowers are required to pay a duty of 2% for every \$1 of interest paid to the non-resident which is not in the nature of an income tax.

7. With reference to paragraph 3 of Article 12:

The term "royalties" as used in this Article shall also mean payments of any kind, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for

- (i) 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), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
- (ii) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

8. With reference to Article 18:

In the case of Austria, Article 18 shall also apply to other corporations of public law.

9. With reference to paragraph 2 of Article 20:

- a) For the purposes of paragraph 2 such remuneration shall also include remuneration for damage resulting from crimes, vaccinations or similar reasons.
- b) The income mentioned in this paragraph shall not be taken into consideration when applying the exemption with progression method.

10. With reference to Article 20:

It is understood that if at any time after the date of signature of this Protocol, New Zealand agrees to an Other Income Article in line with the OECD model, in any of its future double tax agreements, New Zealand shall without undue delay enter into negotiations with the Republic of Austria with a view to providing the same treatment.

11. With reference to Article 25:

For the purpose of clarification it is understood that Article 25 of the Agreement imposes the obligation on the Contracting State which has received a request for information to collect the requested information for the purposes of the requesting State in the same manner as such information would have been collected for its own purposes. If the requested State can obtain specific information only after the formal commencement of administrative or criminal proceedings concerning tax fraud, the aforementioned principle implies that such information also has to be collected upon the request of the other Contracting State if a comparable proceeding has been formally opened in the other State.

12. With reference to Article 25:

It is understood that if at any time after the date of signature of this Protocol, the Republic of Austria shall include provisions allowing the exchange of information that 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 in any of its double tax agreements, the Republic of Austria shall without undue delay enter into negotiations with New Zealand with a view to including such provisions in the Agreement signed today.

13. Interpretation of the Agreement:

It is understood that provisions of the Agreement which are drafted according to the corresponding provisions of the OECD-Model Convention on Income and on Capital shall generally be expected to have the same meaning as expressed in the OECD Commentary thereon. The understanding in the preceding sentence will not apply with respect to the following:

- a) any reservations or observations to the OECD Model or its Commentary by either Contracting State;
- b) any contrary interpretations in this Protocol;
- c) any contrary interpretation in a published explanation by one of the Contracting States that has been provided to the competent authority of the other Contracting State prior to the entry into force of the Agreement;
- d) any contrary interpretation agreed to by the competent authorities after the entry into force of the Agreement.

The OECD Commentary - as it may be revised from time to time - constitutes a means of interpretation in the sense of the Vienna Convention of 23 May 1969 on the Law of Treaties.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Vienna, on 21<sup>st</sup> September 2006, done in duplicate, in the German and English languages, each text being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Republic of Austria:  
Melitta Schubert m.p.

For New Zealand:  
Peter William Hamilton m.p.