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**NEW ZEALAND'S RECENTLY NEGOTIATED DOUBLE TAX AGREEMENTS
AND INTERNATIONAL TAX POLICY REFORM**

ANDREW M C SMITH*

ABSTRACT

Since 2007 New Zealand has negotiated five bilateral treaties dealing with international double taxation all of which contain new provisions not found in New Zealand's earlier DTAs. In this article these treaties are reviewed and analysed with emphasis on the consequential effects for New Zealand's domestic and international tax policies. The changes brought about by these five new treaties provide further evidence that as its DTA network continues to evolve and grow, New Zealand has been increasingly forced to adopt international tax norms (as defined by the OECD Model Agreement) and to concede tax policies and rules that depart from those norms.

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I INTRODUCTION

In common with most OECD countries, New Zealand maintains an active DTA negotiation programme. Since 2007, New Zealand has negotiated five new treaties to relieve international double taxation and eliminate fiscal avoidance and evasion.¹ Four of these are new DTAs — two replacing earlier DTAs with Australia and Singapore, while the remaining two are DTAs with Turkey and Hong Kong, being jurisdictions with which New Zealand has not previously negotiated DTAs. The last of these treaties is a major protocol which revises an existing DTA with the United States.

The objective of this article is to review and analyse these five new treaties and their consequential effects on New Zealand's international tax policies. The analysis in this article shows that a number of provisions in these five new treaties herald significant shifts in New Zealand's DTA policy, with flow on effects to its international tax rules found in its domestic law. The analysis will also show that these changes in DTA and international tax policies mean that New Zealand has effectively revised its position with respect to certain matters in the OECD Model Agreement² and conceded certain key policy positions it has sought to maintain in earlier DTA negotiations.

II KEY FEATURES OF NEW ZEALAND'S DTA POLICY

Like all OECD members, New Zealand conforms with OECD directives and uses the OECD Model Agreement as a basis for its DTA negotiations, departing from the provisions of that Model in areas where it or the other contracting state have decided to adopt policies that are at variance with the Model. Commonly these are in respect of matters which have been entered as reservations and observations to the OECD Model by member states.

New Zealand's key reservations to the OECD Model Agreement can be summarised as follows:

- The business of insurance to not fall within the business profits article (Article 7) but to remain taxable according to the domestic law of each contracting state.³ This permits a contracting state to tax a non-resident insurer in the absence of a permanent establishment.
- A construction project to constitute a permanent establishment if the project lasts for more than six months rather than the usual twelve months.⁴

¹ The analysis in this article is current to 1 April 2012. Since this date, New Zealand has negotiated a new DTA with Canada, replacing an earlier one negotiated in 1980. This new Canadian DTA has not been included in the analysis in this article.

² Organisation for Economic Cooperation and Development, *Model Tax Convention on Income and on Capital*, (OECD, Condensed Edition, July 2010).

³ Reservation entered to pre-2010 version of Article 7: Ibid 172, Commentary to Article 7 para 75.

⁴ Ibid 126, Commentary to Article 5 para 57.

- To retain the right to tax royalties sourced from New Zealand (usually to a maximum of 10%).⁵
- For any payments for the use of scientific, industrial or commercial equipment to fall within the royalty article rather than the business profits article allowing the source state to impose tax within specified limits in the absence of a permanent establishment.⁶
- To reserve its position on the inclusion of other Income⁷ and non-discrimination articles in any DTA it negotiates.⁸

Other reservations which New Zealand has entered include ones to Articles 5 and 6 to protect New Zealand's right to tax natural resource exploitation,⁹ and one to Article 8 to protect its rights to tax domestic (cabotage) traffic carried by non-resident airlines and shipping companies.¹⁰ Although no longer featured as a reservation to the current version OECD Model, New Zealand had entered a reservation to Article 10 in earlier versions of the OECD Model to retain the right to tax all dividends a maximum of 15% without a lower rate for parent-subsidiary dividends.

New Zealand's success at maintaining these positions in its DTA negotiations has been variable. With respect to some of these matters, it has been willing to make concessions. For example, only some of New Zealand's DTAs contain provisions for a construction project to constitute a PE after 6 months, while others following the OECD Model with a 12 month period. Similarly, its reserved position on the inclusion of other income and non-discrimination has sometimes been upheld by their omission while in other cases such articles have been included but with provisions widely departing from the corresponding articles in the OECD Model.¹¹ The retention of equipment leasing within the scope of the royalty article has not been consistently achieved,¹² while the right to tax non-resident insurers under its domestic rules has been more widely maintained, with one notable exception.¹³

Its greatest consistency in its departures from the provisions of the OECD Model has been in the area the withholding tax rates applying to non-resident passive income such

⁵ Ibid 235, Commentary to art 12 para 35.

⁶ Ibid 236, Commentary to art 12 para 42.

⁷ Ibid 302, Commentary to art 21 para 13.

⁸ Ibid 352, Commentary to art 24 para 85.

⁹ Ibid 126, Commentary to art 5 para 53 and Ibid 129, Commentary to Article 6 para 9 respectively.

¹⁰ Ibid 179, Commentary to art 8 para 31.

¹¹ Refer Smith, Andrew M C and Sawyer, Adrian J, 'Chapter 23' in Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer eds, *The Impact of the OECD and UN Model Conventions on Bilateral Tax Treaties* (Cambridge University Press, 2012) 760-3. Many of the non-discrimination articles appearing in New Zealand's DTAs in the equivalent of para (5) prohibit discrimination only vis-a-vis third countries, rather than between New Zealand and the other contracting state.

¹² Although most of New Zealand's DTAs include equipment leasing in the definition of a royalty for treaty purposes, a number of them include protocols which subsequently shift equipment leasing to art 7 (business profits), which means that non-resident lessors cannot be taxed in the absence of a PE. Refer First Protocol, New Zealand-Republic of Korea DTA, para 5

¹³ Being the DTA with Switzerland.

as dividends and royalties. Archival records show that disagreements over withholding tax¹⁴ rates on interest and dividends have been prominent in some DTA negotiations.¹⁵ These disagreements can also be evidenced by the large number of its DTAs which have protocols appended at the time they were negotiated containing 'most-favoured nation' clauses for any future reductions in withholding tax rates.¹⁶

III ANALYSIS OF THE FIVE NEW TREATIES

A Protocol to the United States DTA 1983

The first of the five treaties reviewed in this article is a major protocol signed with the United States on 1 December 2008 to amend the 1983 DTA with that country.¹⁷ This protocol is notable for both its length (almost the same length as a standalone DTA) and the extent of the amendments it makes to the existing 1983 US DTA, which are almost equivalent to the negotiation of a completely new DTA. The negotiation of this protocol is seen as a major achievement for New Zealand after many years of seeking renegotiation of its US DTA. New Zealand felt disadvantaged in its dealings with the United States after Australia renegotiated its US DTA in 2002 and since then has been keen to commence negotiations with the US authorities to obtain similar changes to those Australia obtained in 2002. The conclusion of the protocol is also seen in New Zealand as evidence of its improving relationship and ties with the United States after its defence relationship with the country broke down in the mid-1980s.

The effect of this new protocol is that existing 1983 US DTA is updated in a number of areas. For example, the relationship of the DTA with the General Agreement on Trade in Services is clarified, along with the status of entities such as pension funds and non-profit organisations as well as how trusts and 'fiscally-transparent' entities stand under a number of the existing articles.

Six articles have been completely replaced with revised versions:

- Article 10: Dividends
- Article 11: Interest
- Article 12: Royalties
- Article 16: Limitation of Benefits
- Article 23: Non-discrimination
- Article 25: Exchange of Information

In addition, the existing Article 14 applying to independent personal services has now been deleted, reflecting the deletion of that Article from the OECD Model in 2000, leaving such services to fall within the scope of Article 7 concerning business profits.

¹⁴ Known as Non-Resident Withholding Tax (NRWT) in the *Income Tax Act 2007*.

¹⁵ Refer Smith, A M C; 'A History of New Zealand's Double Tax Agreements' (2010) 16 *New Zealand Journal of Taxation Law and Policy* 105, 111.

¹⁶ Such clauses are found in protocols attached to New Zealand's DTAs with Austria, Chile, Finland, Italy, Korea, Mexico, Norway, Spain, Switzerland, Taiwan, and the United States.

¹⁷ For a more detailed analysis of the US protocol refer: Smith, A M C; 'New Protocol to the 1982 New Zealand-United States Tax Treaty' (2009) 63 *Bulletin for International Taxation* 289.

1 Article 10: Dividends

The new Article 10 brings about considerable changes to the taxation of dividends. While the 15% withholding tax rate is retained for portfolio dividends, when the shareholder is a company that owns at least 10% of the voting interest in the other company, the withholding tax rate is reduced to a maximum of 5%. Where the beneficial owner of the shares is a company that has directly or indirectly at least 80% of the voting power in the company paying the dividend, the dividend is subject to a 0% rate¹⁸ in the source country.¹⁹ Eligibility for this 0% rate, however, is subject to two further conditions:

- The 80% or greater beneficial ownership test must be met for at least 12 months prior to the relevant dividend being paid; and
- The provisions in Article 16 on the limitation of benefits applying to companies must also be met.²⁰

This new dividend article also covers the status of distributions to New Zealand residents by U.S. Regulated Investment Companies ('RICs') or U.S. Real Estate Investment Trusts ('REITs').²¹ Dividends paid by a RIC can be taxed in the U.S. to a maximum of 15%. In the case of dividends paid by a REIT, the 15% limit applies only if:

- The beneficial owner of the dividends is an individual or a pension fund with an interest not exceeding 10% in the REIT; or
- The dividends are paid with respect to a class of stock which is publicly traded and the beneficial owner of the dividends is a person that has an interest not exceeding 5% of any class of the REIT's stock; or
- The beneficial owner of the dividends is a person holding an interest of not more than 10% in the REIT and the REIT is diversified.²²

¹⁸ This is the terminology used in both Subpart RF of the *Income Tax Act 2007* and the relevant DTAs. Why this terminology has been adopted instead of the word 'exempt' is not clear.

¹⁹ Article 10(3) as amended by the Protocol.

²⁰ This is that the principal class of shares in the company holding the 80% or more beneficial ownership must be regularly traded on one or more recognised stock exchanges, one of which is located in the contracting state where the company is resident or the state where the company's primary place of management and control is based, with corresponding provisions for any interposed companies. In the case of pension funds, more than 50% of the entities' beneficiaries must be resident in either contracting state. In the case of closely-held companies, for at least half the days of the taxable year at least 50% of a company's aggregate voting power and value must be held by residents of a contracting state, subject to further anti-avoidance provisions in respect of disbursements made by that person in respect of that shareholding.

²¹ Article 10(4) as amended by the Protocol.

²² For the purposes of the protocol, a REIT is 'diversified' if the value of any single interest does not exceed 10% of its total interests in real property. There is a look-through rule for partnerships in determining if a REIT has real estate interests held through a partnership.

2 Article 11: Interest

While the 10% withholding tax rate for interest is retained in the revised Article 11, the list of exemptions is expanded. The most significant of the new exemptions is for interest beneficially owned by a resident of either state which is a bank or 'enterprise substantially deriving its gross income from the active and regular conduct of a *lending or finance business* involving transactions with unrelated parties' (author's emphasis), provided the interest to which the exemption is being applied is paid between non-associated parties.²³

The term 'lending or finance business' is defined²⁴ to include not only the making of loans but also:

- Purchasing or discounting of accounts receivable notes or instalment obligations (ie factoring);
- Lease financing (including the entering of finance leases and purchasing, servicing, and disposing of finance assets and related leased assets);
- Issuing letters of credit or providing guarantees; or
- Providing charge and credit card services.

If any interest is sourced from New Zealand, to be eligible for the above exemption the New Zealand borrower must have also paid the 'Approved Issuer Levy' ('AIL') in respect of that interest.²⁵ If any interest sourced from New Zealand has not been subject to AIL, New Zealand has the right to deduct withholding tax up to 10%. Furthermore, if the payment of interest in any of the situations listed above is part of 'an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect as back-to-back loans' then New Zealand still reserves the right to impose NRWT up to 10%.²⁶

The inclusion of 'lease financing' here is notable because it is the first New Zealand DTA where leasing is mentioned in the interest article. Most of New Zealand's DTAs do not include specific references to finance leases in their interest articles and this sometimes results in uncertainty as to which article applies to a cross-border finance lease. The inclusion here of leasing represents a significant change to the tax treatment of finance leases under the US DTA as the 1983 US DTA originally provided for the leasing of scientific, industrial and commercial equipment to fall within the scope of the royalty article, enabling the source state to impose tax at a rate up to 10% of the gross amount of the payments. This new wording now means that finance leases can be exempt in the

²³ Article 11(3)(c) as amended by the Protocol.

²⁴ Article 11(3) as amended by the Protocol.

²⁵ AIL is a tax imposed upon New Zealand *borrowers* (not the non-resident lenders) of 2% in respect of interest paid to non-residents under the *Stamp and Cheque Duties Act 1971*. Interest upon which AIL has been imposed is exempt from non-resident withholding tax (NRWT) in New Zealand.

²⁶ Article 11(10)(b) as amended by the Protocol.

source state. It complements changes made to the taxation of operating leases which are discussed in the next section.

3 *Article 12: Royalties*

The revised royalty article contains two major changes from the earlier version of this article negotiated in 1983. The rate of withholding tax that can be imposed in the source state on royalties cannot exceed 5% (instead of the 10% prevailing in the original DTA). This is the first New Zealand DTA with a royalty withholding tax rate below 10%.

Secondly, the leasing of industrial, commercial and scientific equipment (including assets acquired by way of hire purchase arrangements) has been removed from the definition of 'royalty' article. Such leases now fall within the interest article for finance leases (as mentioned earlier) or in the case of operating leases, the business profits article (Article 7). Until this protocol was negotiated, virtually all of New Zealand's DTAs have included equipment leasing within the royalty article, although a number do not ultimately follow through with this treatment due to appending protocols which subsequently modify the tax treatment of equipment leasing by bringing it within the business profits article, which means that New Zealand cannot tax a non-resident lessor unless it has a permanent establishment in New Zealand.²⁷ Such modification to the tax treatment of equipment leasing in this way has often resulted in uncertainty as to whether finance leases are to be taxed under Article 7 (Business Profits) or whether they can still fall within Article 11 (Interest), given the presence in the equivalent of Article 11(3) of wording that interest includes 'any income treated as income from money lent by the laws, relating to tax, of the Contracting State in which the income arises'.²⁸ Thus the revisions here to the royalty and interest articles arising from the US protocol give much greater clarity to the taxation of cross-border leases, both operating and finance.

4 *Article 16: Limitation of Benefits*

While the 1983 DTA does contain a limitation of benefits article, it has been replaced with a revised version under the protocol. The new article introduces different criteria for eligibility to claim benefits under the DTA. In the case of a corporation, the 1983 DTA required that more than 75% of the number of shares be held by a *combination* of U.S. residents and/or citizens and New Zealand-resident individuals. This combination test has been replaced in the new Article 16 with a shareholder test based upon the residency of one contracting state (not both) with limits set at 50% or greater instead of the earlier 75%. A similar 50% test is introduced for pension funds and non-profit entities. Permanent establishments will in some situations be able to claim DTA benefits

²⁷ This shifting of equipment leasing to Article 7 arises under the Belgium, France, Germany, Korea and Netherlands DTAs.

²⁸ Under two of New Zealand's existing DTAs (France and Korea), there is considerable uncertainty as to which article a finance lease falls within as both treaties were negotiated before New Zealand introduced domestic law rules in 1982 for finance leases. The uncertainty arises because both interest articles have a definition of interest with an assimilation clause for interest as defined by the laws of the source state which in these cases has been significantly changed after these DTAs were concluded.

even though the taxpayer may not qualify for benefits under earlier criteria, again a new feature. There is a carryover from the 1983 version of the article for persons who are otherwise ineligible to claim benefits under the DTA to obtain benefits in respect of a specific item of income if the competent authority determines that the 'establishment, acquisition or maintenance of such a person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits' under the DTA (ie treaty shopping). Most of New Zealand's other DTAs contain no equivalent provision.²⁹

5 *Articles 23 and 25 Covering Non-Discrimination and Exchange of Information*

Both of these existing Articles in the 1983 US DTA have been replaced with revised ones. The new non-discrimination article contains updated wording while the new exchange of information article is considerably more detailed, reflecting the revised wording of the 2008 OECD Model Convention.

B Revised DTA with Australia

Negotiations for this new DTA with Australia to replace the earlier 1995 one were concluded on 26 June 2009. The background to the negotiation of this new DTA is notable because the New Zealand Inland Revenue Department publicly solicited submissions prior to commencing negotiations — the first time this had occurred in New Zealand. This request for public input reflects the extensive economic ties that have evolved between the two countries as result of the Closer Economic Relations agreement³⁰ negotiated in 1983 and the consequential relevance of the Australian DTA to many New Zealand taxpayers. The conclusion of this revised DTA was given some urgency after the conclusion of the US protocol so that New Zealand's Australian DTA would contain comparable provisions to those that had been negotiated with the US.

The key changes arising from this new DTA include:³¹

- Revised limits on withholding taxes on passive income;
- Provisions for 'fiscally transparent' entities;
- Revised definition of permanent establishment;
- Revised arrangements for dependent services;
- Pension taxation;
- Inclusion of non-discrimination article.

²⁹ Some New Zealand DTAs (China, Fiji, India, Korea, Malaysia, Singapore) contain an unusual provision to limit specific benefits arising from tax sparing granted under these DTAs. These limitation of tax sparing benefit provisions appear either by way of Protocol or in the treaty itself and allow New Zealand to deny the benefits of tax sparing to parties from third countries after consultations between the New Zealand Inland Revenue Department and corresponding revenue authority.

³⁰ *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA) signed 28 March 1983 in Canberra. This Agreement replaced the New Zealand Australia Free Trade Agreement signed in 1965.

³¹ For a more detailed analysis of the new Australian DTA refer: Quintal, A and G Mills, 'New trends in New Zealand's Double Tax Agreements' [2010] 5 *New Zealand Tax Planning Reports* 1.

1 *Revised Limits for Withholding Taxes on Passive Income*

Article 10 in this new DTA contains revised withholding tax rates applying to dividends comparable to those in US protocol. The 15% rate for portfolio dividends remains, but a 5% rate is introduced for shareholdings of 10% or more, which is consistent with the OECD Model Agreement. In addition there is a 0% rate if the beneficial voting interest in the company is 80% or more for at least 12 months prior to the declaration of the dividend and the beneficial owner of the dividends is a company which is:

- listed and has its principal class of shares regularly traded on a recognised stock exchange (as specified in Article 3);³² or
- owned directly or indirectly by companies listed on recognised stock exchanges listed in Article 3, or by companies which would be eligible for similar benefits under a DTA with a third country; or
- if neither of the above two conditions are met, one in respect of which the competent authority of the source state is satisfied that the dividends are not being paid deliberately as part of an arrangement to exploit this exemption, as specified in paragraph 9 of the Article.

Thus, for 80% or greater holdings the conditions for the 0% rate are not directly comparable to the conditions for the 0% rate in the US protocol. An exemption is also provided for all dividends paid to a contracting state, political subdivision or local authority including sovereign wealth funds.³³

Interest remains taxable at a maximum of 10% under this new DTA; however, a 0% rate is specified for interest paid to third party banks and some government bodies.³⁴ In common with the US treaty, for any New Zealand-sourced interest to be eligible for this 0% rate, the New Zealand borrower must have paid the Approved Issuer Levy in respect of that interest. If this Levy is not paid, New Zealand has the right to deduct withholding tax up to 10%. In addition, if any interest paid is part of 'an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect as back-to-back loans' it is not eligible for the 0% rate and New Zealand can still deduct withholding tax up to 10%.

In common with the revised US DTA, the withholding tax rate for royalties has been reduced to 5%. Another significant change is that equipment leasing no longer falls within the definition of royalties for treaty purposes, which means that a non-resident lessor cannot be taxed in a contracting state in respect of an operating lease unless they are carrying on business through a PE there. Finance leases remain within the scope of the interest article due to the assimilation clause in the definition of interest in paragraph (5) in that article.

³² Being the Australian and New Zealand exchanges as well as any other stock exchange which the two competent authorities agree to.

³³ Article 10(4). Relevant sovereign funds would be the Australian Future Fund and the New Zealand Superannuation Fund.

³⁴ Article 11(3).

2 *Fiscally Transparent Entities*

A paragraph has been included in Article 1 to confirm that income derived by a person through a fiscally transparent entity (such as a limited partnership) under the laws of either state is to be treated as derived by a resident of that state if the income is so treated under the domestic law of the state where the person is resident.³⁵ This addresses a problem that can arise with Australian limited partnerships where they are taxed as companies in Australia but treated as fiscally transparent in New Zealand.

3 *Definition of Permanent Establishment and Independent Services*

This new DTA contains a significantly revised PE definition in Article 5 incorporating special provisions for personal services, which follows the option outlined in paragraph 42.23 of the Commentaries to Article 5 of the OECD Model for independent personal services. These provisions apply to activities that were previously within the scope of the former Article 14 prior to its deletion from the OECD Model in 2000. Under Article 5(4) of the new Australian DTA, a PE arises if a taxpayer performs services in a contracting state for more than 183 days in any 12 month period and more than 50% of the gross revenues attributable to the active business of the enterprise are attributable to those activities. A PE also arises if such services are provided for more than 183 days in any 12 month period for the same or connected project through one or more individuals being present in the state.³⁶ In applying this second limb, visits not exceeding 5 days are not taken into account unless the services are performed by that individual on a regular basis.³⁷ These rules for cross-border services were unique among New Zealand's DTAs (they were subsequently followed in the new Hong Kong DTA reviewed later in this article) and are appropriate given the extent of the trade in services between the two countries as they provide an efficient and convenient basis for taxing such services.

A PE also arises from activities connected with natural resource exploitation if they exceed 90 days in any 12 month period.³⁸ The operation of substantial equipment in a state also creates a PE if its operation exceeds 183 days in any 12 month period.³⁹ In earlier DTAs there was no time limit specified for such activities.

4 *Dependent Services*

Reflecting the tenor of the provisions for independent personal services above, there is a new provision in Article 14(4) (Income from Employment) applying to short-term secondments. The income from such secondments would normally be taxable in the state where the work was performed because the employer is either resident or has a PE there. However, under this new DTA if such secondments do not exceed 90 days in any

³⁵ Article 1(2).

³⁶ Article 5(4)(a)(ii).

³⁷ Article 5(5). This five day exclusionary rule does not appear in the Commentaries to the OECD Model and appears unique to the Australian-New Zealand DTA.

³⁸ Article 5(4)(b).

³⁹ Article 5(4)(c).

12 month period then the employee remains taxable in respect of their employment income only in the contracting state where they are usually based.

5 Pensions

Both New Zealand and Australia have adopted domestic tax rules for superannuation (pension) schemes whereby benefits paid from approved schemes are exempt from tax in members' hands. The new Australian DTA contains a revised pension article which extends this tax exemption when pensions are paid between the two countries.⁴⁰ This mutual exemption is a departure from the usual tax treatment of pensions in the OECD Model.⁴¹ The revised pension article however, allows New Zealand to tax offshore payments (known as 'portable payments') of New Zealand Superannuation although it currently does not do so under domestic law.⁴²

Foreign taxation of New Zealand pensions paid offshore has often disadvantaged New Zealanders pensioners living overseas as the New Zealand domestic exemption for pension payments is not usually recognised overseas, which results in further taxation without any foreign tax credit being available as they were exempt in New Zealand. While these revised pension tax rules in the Australia DTA will be welcomed by affected persons, it has only been possible to negotiate this mutual recognition of exempt pensions because both countries provide for exempt pensions in their domestic law. Additionally, New Zealand sees these arrangements as unique in the context of the open market with Australia and the free movement of labour between the countries. A New Zealand public official has indicated to the author that New Zealand will otherwise continue to adhere to the position in the OECD Model that pensions are taxable only in the residence state and it will not seek similar exemptions for its pensions in other DTA negotiations.

6 Non-Discrimination Article

Despite four comprehensive DTAs being negotiated with Australia since 1960, only this latest one includes a non-discrimination article.⁴³ New Zealand has entered a reservation to the corresponding article in the OECD Model and approximately half of its treaties do not include one, which is also the case for many DTAs negotiated by Australia.⁴⁴

The non-discrimination article included in this treaty follows the OECD Model in key paragraphs. In particular it has adopted the equivalent of Article 24(5) from the OECD Model, concerning permanent establishments. Many non-discrimination articles found

⁴⁰ Article 18(1).

⁴¹ This treatment is discussed as an option in the Commentary to Article 18: OECD, *Model Tax Convention on Income and on Capital*, above n 2, 281–2 paras 22–23.

⁴² Exempt under *Income Tax Act 2007* ss CW 28(1)(c), (d).

⁴³ Article 24.

⁴⁴ Refer C J Taylor, 'Some distinctive features of Australian tax treaty practice: An examination of their origins and interpretation' (2011) 9 *eJournal of Tax Research* 294, 324.

in New Zealand DTAs contain a significantly modified version of Article 24(5), which only outlaws discrimination vis-a-vis third states for permanent establishments.⁴⁵

The non-discrimination article in the Australian DTA also follows a pattern found with non-discrimination articles in other New Zealand DTAs in that it contains additional paragraphs to those found in the OECD Model. These paragraphs are designed to clarify that the non-discrimination article does not apply to anti-avoidance provisions specifically targeted at non-residents such as transfer pricing and thin capitalisation rules. The non-discrimination article in the Australian DTA goes further than most of New Zealand's DTAs in this regard by also including in Article 24(5) a list of specific provisions to which the non-discrimination article does not apply such as provisions:

- Designed to *prevent the avoidance or evasion of taxes*; (author's emphasis — the term is specifically defined further in the DTA, which is discussed below);
- Preventing the deferral of tax arising on the transfer of assets where the subsequent transfer by the transferee would take it beyond the taxing jurisdiction of the contracting state;
- Providing for the taxation of a group of companies on a consolidated basis, provided that companies resident of one state but controlled by residents from the other contracting state are treated equally;
- Providing for the transfer of company losses within a group;
- Denying rebates, credits and exemption in relation to dividends paid by a company which is resident of a state;
- Providing deductions to eligible taxpayers for research and development expenditure; and
- Subsequently added to this list of exclusions by an Exchange of Notes between the contracting states.

The phrase 'designed prevent the avoidance or evasion of taxes' is defined in 24(6) to include:

- Measures designed to address thin capitalisation, dividend stripping, and transfer pricing;
- Controlled foreign company, transferor trusts, and foreign investment fund rules; and
- Measures designed to ensure that taxes can be effectively collected and recovered.

These exclusionary provisions in Article 24(5) and (6) are the most detailed of any found in a non-discrimination article from a New Zealand DTA to date and have been subsequently carried over to the new Hong Kong DTA. These exclusions appear to reflect concerns of both Australia and New Zealand that anti-avoidance measures aimed

⁴⁵ Refer Hunt, G; 'New Zealand's Evolving Approach to Tax Treaties' (2008) 14 *New Zealand Journal of Taxation Law and Policy* 131, 166.

at non-residents could be overruled by the OECD Model non-discrimination article or that certain domestic tax rules applying to companies could create tax avoidance opportunities in a cross border situation.

C Revised DTA with Singapore

Negotiations for this new DTA were concluded on 26 August 2009, replacing one of New Zealand's oldest DTAs, which dated back to 1973 and was negotiated prior to New Zealand's accession to the OECD the same year. The 1973 Singaporean DTA was not based on the 1963 OECD Model and its replacement with a modern version based on the OECD Model was long overdue.

In most respects the new DTA follows the OECD Model closely, with the usual variations where New Zealand has entered reservations to that Model (for example, the taxation of general insurers). The key provisions in the new DTA of note include:

- Revised limits on withholding taxes on passive income;
- Definition of permanent establishment;
- Article 13: Alienation of property and other articles.

1 Withholding Taxes on Passive Income

Following the withholding tax reductions agreed to in the US protocol and the new Australian DTA, the Singaporean DTA also includes a lower rate of 5% applying to dividends paid to a company with a voting interest of 10% or more. Unlike the US and Australian treaties, there is no provision for a 0% rate if the voting interest is 80% or more. This omission, however, will be of little consequence in many instances due to domestic law changes made to New Zealand's withholding tax rates in 2010 after the US protocol was negotiated, which are explained later.

Also following the US protocol and Australian DTA, royalties are taxed at a maximum of 5%, a reduction from 15% in the 1973 DTA. Equipment leasing, however, remains within the scope of the royalty article.

The interest article in the new Singaporean DTA closely follows the OECD Model, which is a significant change from the earlier 1973 DTA where interest could be taxed at a maximum of 15% and interest paid between associated persons did not enjoy any relief under the DTA at all. The maximum rate of tax on interest is now 10% and certain payments of interest from governmental agencies are exempt. No reference to the New Zealand Approved Issuer Levy is made in this new DTA.

2 Definition of Permanent Establishment

Similarly to the new Australian DTA, the PE definition contains provisions applying to the operation of substantial equipment and also natural resource exploitation activities — both of which give rise to a PE if conducted for more than 183 days in the aggregate in any 12 month period. Similarly, a 183 day rule applies for services but unlike the Australian DTA there is no 50% gross turnover threshold.

3 *Article 13: Alienation of Property and Other Articles*

The 1973 Singaporean DTA did not include an alienation of property article but one is now included, as are a number of other articles that also omitted from the 1973 DTA. Interestingly for a new DTA based on the OECD Model, non-discrimination and collection of taxes articles have not been included. While New Zealand has reserved its position on the non-discrimination article in the OECD Model, it is still willing to include such articles in its DTAs, although often with modifications as have been discussed earlier. New Zealand has expressed no reservation about including tax recovery articles in its DTAs, so the omission of both these two articles may suggest objections from Singapore.

4 *Tax Sparing*

The 1973 Singaporean DTA was the first DTA negotiated by New Zealand which included provisions for tax sparing, protecting the benefit of Singaporean tax incentives for New Zealand investors. Surprisingly this provision has been carried over to the new DTA (despite Singapore now being considerably wealthier than New Zealand), although agreement has finally been obtained for it to be phased out in 10 years' time.⁴⁶ The anti-avoidance provision applying to the tax sparing obtained by special protocol in July 1993 is now incorporated into the text of the new DTA in paragraph (5).

D *New DTA with Turkey*

The DTA with Turkey was negotiated on 22 April 2010.⁴⁷ This is the first time New Zealand has negotiated a DTA with Turkey, which is also an OECD member. In most respects the new DTA follows the OECD Model closely, with the usual variations where New Zealand has entered reservations to that Model. The key provisions which are of note include:

- Limits on withholding taxes on passive income;
- Definition of permanent establishment; and
- Inclusion of an independent services article.

1 *Withholding Taxes on Passive Income*

Consistently with the earlier reductions to withholding tax rates on dividends, agreed to in the US protocol and the new Australian and Singaporean DTAs, the Turkish DTA includes a lower rate of 5% applying to dividends paid to a company with a voting interest of 25% or more (not the 10% threshold specified in the US, Australian, and Singaporean DTAs). In common with the Singaporean DTA, there is no provision for a 0% rate if the voting interest is 80% or more. Unusually, Turkey retains the right to tax

⁴⁶ Article 21(6).

⁴⁷ This treaty has been recently brought into effect under *Income Tax Act 2007* s BH 1, applying from the income year beginning 1 April 2012.

branch profits of New Zealand resident at either 5% or 15%, the lower rate applying if the branch profits are exempt in New Zealand.⁴⁸

The interest article, however, provides for 10% withholding tax only if the interest is paid to a bank, but otherwise the 15% rate applies to all other interest, except for certain payments of interest to Government bodies. The 15% rate for interest is high by modern standards and appears to reflect Turkish concerns about the erosion of their tax base through offshore interest payments. Royalties are taxable at a maximum of 10% and leasing is brought within the scope of the royalty article in line with most of New Zealand's earlier DTAs.

2 *Definition of Permanent Establishment and Personal Services*

Similarly to the new Australian and Singaporean DTAs, the PE definition includes the operation of substantial equipment and also natural resource exploitation activities – both of which give rise to a PE if conducted for more than 183 days in the aggregate in any 12 month period. Unlike the Australian and Singaporean DTAs, the Turkish DTA does not include independent personal services within the definition of a permanent establishment. The DTA has followed the OECD Model prior to its revision in 2000 and included the equivalent of the old Article 14 with a 183 day rule for such services.

The Turkish DTA has a lengthy Protocol attached to it. Among its clauses is a provision that restricts the ability of head offices to charge offshore expenses against Turkish branch profits, which appears to either reverse or substantially restrict the scope of Article 7(3) in the main body of the treaty (taken from the OECD Model) regarding the deduction of head office expenses against branch profits. Coupled with the provisions allowing extra taxes to be imposed upon Turkish branch profits in lieu of dividend withholding tax, it appears that Turkey has some concerns about tax avoidance through the use of branch structures in that country.

E *New DTA with Hong Kong*

The DTA with Hong Kong was negotiated on 1 December 2010 and is New Zealand's second comprehensive DTA with a quasi tax haven, the first being a DTA with the United Arab Emirates, signed in 2003.⁴⁹ The Hong Kong DTA has been negotiated as part of a bilateral free trade agreement negotiated between New Zealand and the territory. Hong Kong has only recently started negotiating comprehensive DTAs.⁵⁰ It had previously been satisfied negotiating limited scope shipping and air transport treaties, these being areas where double taxation was a particular concern for Hong Kong based enterprises,

⁴⁸ Turkey has entered a reservation to Article 10 to this effect: OECD *Model Tax Convention on Income and on Capital*, above note 2, 205, Commentary to Art 10, para 5.

⁴⁹ This treaty has just been brought into effect under *Income Tax Act 2007* s BH 1 at the time of writing and applies for the income year beginning 1 April 2012; however some provisions apply from 1 January 2012.

⁵⁰ Hong Kong rapidly expanded its DTA network in 2010 and 2011, negotiating 16 DTAs in two years. Refer Vanderwolk, J, 'Hong Kong's new tax treaty network' (December 2011) 9 *eJournal of Tax Research* 247. Other OECD members that have concluded comprehensive DTAs with Hong Kong include Austria, Belgium, Czech Republic, France, Hungary, Ireland, Japan, Luxembourg, Netherlands, Portugal, Spain, Switzerland, and the United Kingdom.

given its sourced based taxation regime. The impetus to negotiate comprehensive DTAs has been driven by concerns about the competitiveness of Hong Kong as a trading and financial centre (especially vis-a-vis Singapore), blacklisting under other countries' CFC rules, and pressure for information exchange from the G-20 and OECD.⁵¹

The new Hong Kong DTA is based on the OECD Model and the key areas of departure from that Model are very similar to those in the new Australian DTA. Notable provisions in this new DTA include:

- Limits on withholding taxes on passive income;
- Definition of permanent establishment;
- Detailed non-discrimination Article.

1 *Withholding Taxes on Passive Income*

The standard withholding tax rate for dividends is 15%. Consistent with the earlier reductions to withholding tax rates on dividends agreed to in the US protocol and the new Australian, Singaporean, and Turkish DTAs, the Hong Kong DTA includes a lower rate of 5% applying to dividends paid to a company with a voting interest of 10% or more.⁵² There is also provision for a 0% rate if the beneficial voting interest in the company is 50% or more and the beneficial owner of the dividends is a company that is:

- listed and has its shares regularly traded on a recognised stock exchange (as specified in Article 3);⁵³
- owned directly or indirectly by companies listed on recognised stock exchanges listed in Article 3, or by companies which would be eligible for similar benefits under a DTA with a third country; or
- if neither of the above two conditions are met, one in respect of which the competent authority of the source state is satisfied that the dividends are not be paid deliberately as part of an arrangement to exploit this exemption as covered in paragraph 8 of the Article.⁵⁴

Also in common with the Australian DTA, dividends paid to specified government institutions in both states are to be exempt from tax.⁵⁵ The conditions for the 0% rate are slightly different to the Australian DTA in that the voting interest threshold is 50% not 80% and there is no requirement for the voting interest threshold to be maintained at least 12 months before the dividend is declared. This DTA in fact contains the most liberal taxing provisions for cross-border dividends of any New Zealand DTA to date.

⁵¹ Refer Vandervolk *ibid* 248–9.

⁵² Article 10(2).

⁵³ Being the Hong Kong and New Zealand exchanges as well as any other stock exchange which the two competent authorities agree to.

⁵⁴ Article 10(3).

⁵⁵ Article 10(4).

The interest article is very similar to the one included in the new Australian DTA. The basic withholding tax rate is 10%, with exemptions for interest paid to specified government bodies. Also exempt is interest paid to non-associated financial institutions; however, in New Zealand's case the exemption only applies if the interest is subject to the Approved Issuer Levy ('AIL').⁵⁶ Royalties in this new treaty are also taxable at 5%. But unlike the Australian DTA, equipment leasing still falls within the scope of the royalty article.

2 *Definition of Permanent Establishment and Personal Services*

The Hong Kong DTA includes a PE definition very similar to that found in the new Australian DTA. Apart from the similar provisions applying to natural resource exploitation and operation of substantial equipment both of which give rise to a PE if such activities carry on for more than 183 days in any 12 month period,⁵⁷ there are also identical provisions applying to personal services performed by one person (183 days in any 12 month period plus a 50% + gross revenue test), and services performed by more or more persons on the same or connected project (183 days in a 12 month period).⁵⁸

3 *Other Provisions of Note*

The Hong Kong DTA contains a non-discrimination article almost identical to one in the new Australian DTA (noted earlier in section III.B.6.), which incorporates a lengthy and detailed list of provisions to which the article does not apply. The incorporation of these exclusions, identical to those in the new Australian DTA, suggests they have been included at New Zealand's request and reflect New Zealand's concern that non-discrimination undertakings could frustrate the application of its anti-avoidance provisions targeted at non-residents, or its desire to prevent tax avoidance occurring through unintended exploitation of one state's domestic company tax rules.

In common with the new Singaporean DTA, the Hong Kong DTA does not include an assistance in the collection of taxes article.

IV SUBSEQUENT DOMESTIC LAW CHANGES

The announcement that a substantial protocol had been negotiated with the US with reduced dividend withholding tax rates had immediate implications for New Zealand domestic tax law, particularly the foreign investor tax credit ('FITC') rules.⁵⁹ Although no reference was made to the FITC rules at the time the protocol was announced in

⁵⁶ Article 11(5).

⁵⁷ In the Australian DTA, the threshold for natural resource exploitation is only 90 days in any 12 month period, while substantial equipment operation is 183 days.

⁵⁸ Article 5(5).

⁵⁹ Refer A M C Smith, 'The Taxation Of Non-Resident Equity Investment In New Zealand: Unilateral Extension of Domestic Imputation Regime To Non-Resident Portfolio Investors' (1994) 48 *Bulletin for International Fiscal Documentation* 59; and A M C Smith 'Dividend Imputation and International Equity Investment: Unilateral Extension of Imputation to Non-resident Investors' (1994) 11 *Australian Tax Forum* 247.

December 2008, it was immediately recognised that these rules would have to be revised before the US protocol came into effect otherwise a windfall tax reduction would arise for US shareholders of New Zealand companies.⁶⁰

There was already some evidence prior to the negotiation of the new US protocol that New Zealand officials were reconsidering the FITC rules.⁶¹ In a discussion document titled *New Zealand's International Tax Review: A direction for change*,⁶² issued as part of a comprehensive review of New Zealand's CFC rules, it was noted that while the FITC rules had resulted in lower overall New Zealand tax for non-resident investors, because New Zealand continued to levy 15% withholding tax on dividends it had been unable to obtain reciprocal reductions in foreign taxes imposed on foreign dividends paid to New Zealand investors.⁶³ This was seen as placing New Zealand at a disadvantage with Australia, especially after Australia had renegotiated its US DTA in 2002.⁶⁴ There were also concerns that the FITC rules may not have entirely achieved what was intended from their introduction due to high compliance costs for New Zealand companies applying the FITC rules and also to the fact that the tax reductions these rules provided were not captured in headline rates of tax and thus were often difficult for foreign investors to comprehend.⁶⁵

Due to impact of the reduced dividend withholding tax rates on the FITC rules, before the US protocol was brought into effect amendments were made to the FITC rules in 2010. The FITC rules are now limited to portfolio investors who have voting interests in New Zealand resident companies of below 10% and are also conditional on their dividends being subject to non-resident withholding tax at 15% or more after any applicable DTA.⁶⁶ Because these changes to the FITC rules affected investors from all countries (not just the US), changes were also made to the dividend withholding tax rates where shareholders had voting interests of 10% or more. The withholding tax rates for 'fully imputed' dividends⁶⁷ paid to these shareholders were reduced as follows:

- For non-resident investors, with 10% or greater voting interests in a New Zealand resident company, fully imputed dividends are subject to withholding tax at 0% (ie

⁶⁰ Refer Smith, Andrew M C; 'New Protocol to the New Zealand-United States Treaty' (2009) 63 *Bulletin for International Taxation* 289, 293.

⁶¹ Minister of Revenue, Hon Peter Dunne, *Ministerial Media Release*, 24 August 2006.

⁶² Hon Dr Michael Cullen, Minister of Finance and Hon Peter Dunne, Minister of Revenue, Policy Advice Division of the Inland Revenue Department, Wellington, New Zealand, December 2006.

⁶³ Paragraph 8.12, 64.

⁶⁴ Paragraph 8.13, 64.

⁶⁵ Evidence of this can be seen in the following letter to the editor of *Tax Notes International* by the author in response to an article surveying Asia Pacific company tax rates: Smith, A M C; 'Clarifying New Zealand's Dividend Withholding Tax Rates', Letters to the Editor (2005) 40 *Tax Notes International* 509.

⁶⁶ *Income Tax Act 2007*, s LP 2(1)(a). The FITC rules are predicated on New Zealand being able to impose withholding tax at 15% on dividends, and if any lower rate was applicable it would mean that non-resident investors would effectively pay less tax than New Zealand resident ones if there was no revision to the FITC rules.

⁶⁷ The formula for calculating 'fully imputed' dividends is contained in *Income Tax Act 2007*, s RF 9. Fully imputed dividends are ones that are paid out of company profits and which have borne income tax at the full company tax rate.

exempt).⁶⁸ This 0% rate applies whether or not the non-resident shareholder is a company, which is more liberal than the conditions specified in the three DTAs with the 0% rate where the 0% rate applies only to corporate shareholders.

- Fully imputed dividends paid to shareholders with voting interests below 10% where a DTA applies with a tax rate below 15% also attract the 0% rate.

The effect of these changes is that the withholding tax reductions for dividends in these new DTAs have been extended to all non-resident investors from whatever country, irrespective of whether they are subject to a DTA or not. Furthermore, eligibility for the 0% rate is extended to all shareholders of any kind, not limited to only corporate ones as specified in the three relevant DTAs.

V IMPLICATIONS OF THESE NEW TREATIES FOR NEW ZEALAND'S INTERNATIONAL TAX POLICY

These five new treaties are the first to include withholding tax rates below 15% for dividends and below 10% for royalties after New Zealand for many decades insisting on these rates in all of its DTAs. Although New Zealand had effectively reduced dividend taxation for non-residents under the FITC rules introduced in 1993, this was a unilateral reduction without any reciprocal reduction for New Zealand investors offshore. The reduced rates in these new treaties now mean that New Zealand investors will enjoy reciprocal tax reductions on their foreign dividends, something that the FITC rules did not achieve.

Withholding tax rates have been a point of disagreement in many of New Zealand's DTA negotiations, reflecting tensions between a capital importing country and capital exporting ones.⁶⁹ As a consequence of these disagreements, many of New Zealand's DTAs contain 'most favoured nation' ('MFN') clauses in protocols appended to its DTAs, requiring it to enter negotiations 'without undue delay' with a view to reducing withholding tax rates if it subsequently negotiates another DTA with lower withholding tax rates. Until the negotiation of the US protocol in December 2008, New Zealand had been able to maintain consistent withholding tax rates in all of its DTAs and not trigger these clauses. The negotiation of these five new treaties means that New Zealand has now triggered these MFN clauses and must notify the relevant states that it is prepared to enter negotiations to revise the withholding tax rates in its existing DTAs with those states; however, no such negotiations have occurred to date.

The pressure for other countries to seek equivalent reductions in withholding tax rates has, however, been undermined by the unilateral reductions in domestic dividend withholding tax rates New Zealand made in 2010. The new DTAs reviewed in this paper, and the existing MFN obligations, could have given New Zealand some scope to quickly obtain commensurate reductions in the withholding tax rates in its other DTAs. However, the simultaneous reduction in its dividend withholding tax rates in its domestic law on more liberal criteria than specified in these five new treaties means

⁶⁸ *Income Tax Act 2007*, s RF 11B(a).

⁶⁹ Refer Smith, A M C; 'A History of New Zealand's Double Tax Agreements' (2010) 16 *New Zealand Journal of Taxation Law and Policy* 105, 129.

that any leverage has been effectively conceded. This is despite the earlier conclusion of New Zealand public officials that the FITC rules were deficient in not providing reciprocal reductions for New Zealand investors and that withholding tax reductions were better made in the context of bilateral tax treaties. There may, however, be some impetus to renegotiate lower withholding tax rates on royalties as the domestic rate of 15% is unchanged.

The New Zealand experience of DTA partners seeking renegotiation or amendment of existing DTAs when a MFN clause is triggered is also mixed. New Zealand has previously given MFN undertakings in respect of the inclusion of non-discrimination articles in its DTAs, a number of which have been triggered only to have less than half the countries exercise their right to enter negotiations for inclusion of such an article. This probably reflects the relative unimportance of New Zealand as a trading partner given its small size. It may also suggest that even if the domestic law tax reductions had not been made in 2010, other states may not have exercised their MFN rights very quickly.

Turning now to the practical impact of these new DTAs, and the subsequent domestic law changes on cross-border dividend taxation, the difference in the conditions for the 0% rate in these new treaties and in domestic law should be noted. Under the revised domestic law, a shareholder does not have to be a company for the 0% rate to apply, while under the new DTAs the 0% rate is limited to corporate shareholders. Secondly, the shareholding (or voting interest) thresholds for the 0% rate are not aligned between domestic law and the three new DTAs with the 0% rate. Domestic law is more generous and allows the 0% rate to apply where a 10% or greater voting interest exists, while the three DTAs specify voting interests of 80% or more in the case of Australia and the US and 50% or more with Hong Kong. The additional condition in these three DTAs that the shareholding company must also have their shares regularly traded on a recognised stock exchange will be effectively irrelevant in many cases because domestic law provides the same tax relief (ie the 0% rate) without any requirement for the shareholder to even be a company, let alone being publicly listed.

Another point of difference between the three new DTAs with the 0% rate and domestic law is that under domestic law only 'fully imputed' dividends (ie those paid out of profits that have borne company tax at the full rate) are eligible for the 0% rate, while under the US, Australian, and Hong Kong DTAs all dividends are eligible for the 0% rate whether they are fully imputed or not. This latter point is significant for distributions of capital gains which have not been taxed at the company level, a relevant issue in New Zealand since it does not comprehensively tax all capital gains. Under domestic law, untaxed capital gains distributed as dividends still attract withholding tax at 30%, but if paid to eligible corporate shareholders in the US, Australia and Hong Kong they will qualify for the 0% rate, which means that capital gains can be remitted from New Zealand without any New Zealand tax payable at either the company or shareholder levels.

At a higher level, the changes heralded under these new treaties provide further evidence that New Zealand's international tax policies are continuing to converge with OECD norms after decades of being at variance with them in a number of key areas.⁷⁰

⁷⁰ Ibid.

This trend towards convergence appears to have occurred because New Zealand now sees itself as both a capital exporter and importer (although an overall *net* importer) and that concessions on source taxation when reciprocally extended under a DTA will result in it collecting more tax from offshore investment by New Zealand residents. It is also final recognition that by obtaining reciprocal tax concessions for New Zealand investors and traders offshore, New Zealand will help to improve their international competitiveness. This point can also be seen in the Australian and Hong Kong DTAs with their provisions for independent personal services, which provide generous exemptions for offshore service providers in each source state.

VI CONCLUDING COMMENTS

The five new treaties reviewed in this article are New Zealand's latest and contain major departures from what New Zealand has previously negotiated in its earlier DTAs. In particular, the withholding tax rates on dividends and royalties are lower than those prevailing in New Zealand's earlier DTAs and conform more closely to those found in the OECD Model Agreement. These reductions represent a further shift in New Zealand's international tax policy towards emphasising residence based taxation and conforming to taxing norms as found in the OECD Model.

It is disappointing that the consequential domestic law changes made to accommodate these treaties removed a lever New Zealand would have had with its other DTA partners to obtain reciprocal withholding tax reductions for New Zealand investors under the MFN clauses appended to many of its DTAs. The presence of MFN clauses in a number of its DTAs does oblige New Zealand to enter into negotiations with a number of other states for similar reductions to the rates in existing DTAs; however, the experience with MFN clauses for non-discrimination clauses suggests that many countries may not have sought those negotiations and are even less likely to do so after these unilateral reductions in dividend withholding tax rates.

New Zealand maintains an ongoing DTA negotiation programme. As at January 2012, it was engaged in negotiations with Canada, Netherlands, United Kingdom, and Vietnam for new or revised DTAs.⁷¹ Negotiations for protocols to revise existing DTAs with Austria, India, and Malaysia were also underway at the same date. However, New Zealand still has two old DTAs with Fiji and Japan respectively, which are not based on the OECD Model. Negotiations for a new DTA with Japan have since been concluded in June 2012, although it may not be signed until 2013.⁷² However, there are no proposals yet to revise the Fijian DTA or negotiate a new DAT with Malaysia, which will be New Zealand's oldest and only DTAs not based on the OECD Model once the new Japanese DTA is signed.

⁷¹ Ministry of Foreign Affairs and Trade, *Treaties and International Law: International Treaties List as at July 2012*, 71. *Double Tax Agreements (DTAs)* <<http://www.mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/1-International-Treaties-List/16-Double-Tax-Agreements.php>>. A revised DTA with Canada was subsequently signed in May 2012.

⁷² Hon Peter Dunne, Minister of Revenue, *NZ-Japan to update double tax agreement*, Media Statement, 29 June 2012.