

**AGREEMENT BETWEEN
NEW ZEALAND
AND
THE REPUBLIC OF CROATIA
FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON
INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE**

The Republic of Croatia and New Zealand,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:

**Article 1
PERSONS COVERED**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, 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 the purposes of taxation by that Contracting State, as the income of a resident of that Contracting State.
3. This Agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9 and Articles 18, 19, 21, 22, 23 and 26.

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:
 - a) in the Republic of Croatia:
 - (i) the profit tax;
 - (ii) the income tax;
 - (iii) any other surcharge levied on one of these taxes;(hereinafter referred to as "Croatian tax");
 - b) in New Zealand:
 - (i) the income tax;(hereinafter referred to as "New Zealand tax").
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.
5. Notwithstanding the provisions of paragraphs 1 and 2, 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.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the term "Croatia" means the territory of the Republic of Croatia as well as those maritime areas adjacent to the outer limit of territorial sea, including

- seabed and subsoil thereof, over which the Republic of Croatia in accordance with international law and the laws of the Republic of Croatia exercises its sovereign rights and jurisdiction;
- 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 Croatia or New Zealand, as the context requires;
 - d) the term “person” includes an individual, a company, recognised pension fund, collective investment vehicle, non-profit organization and any other body of persons;
 - e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - f) the term “enterprise” applies to the carrying on of any business;
 - g) 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;
 - h) the term “international traffic” means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that Contracting State;
 - i) the term “competent authority” means:
 - (i) in Croatia, the Minister of Finance or his authorised representative;
 - (ii) in New Zealand, the Commissioner of Inland Revenue or an authorised representative;
 - j) the term “national”, in relation to a Contracting State, means:
 - (i) any individual possessing the 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 “business” includes the performance of professional services and of

other activities of an independent character;

- l) the term “recognised pension fund” of a Contracting State means an entity or arrangement established in that Contracting State and:
 - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that Contracting State; or
 - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i);
 - m) the term “non-profit organisation” means an organisation that is established and maintained in a Contracting State exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes according to the laws of that Contracting State.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 23, have the meaning that it has at that time under the law of that Contracting State for the purposes of the taxes to which the Agreement 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 Agreement, the term “resident of a Contracting State” means any person who, under the laws of that Contracting State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that Contracting State and any political subdivision or local authority thereof as well as a recognised pension fund and a non-profit organisation of that Contracting State. This term, however, does not include any person who 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 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 that 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, 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 Agreement, 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 this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.
4. Notwithstanding the other provisions of this Agreement, a collective investment vehicle which is established in a Contracting State and which receives income arising in the other Contracting State shall be treated, for the purposes of applying the Agreement to such income, as an individual who is a resident of the Contracting State in which it is established and as the beneficial owner of the income it receives (provided that, if an individual who is a resident of the first-mentioned Contracting State had received the income in the same circumstances, such individual would have been considered to be the beneficial owner thereof), but only to the extent that the beneficial interests in the collective investment vehicle are owned by residents of the Contracting State in which the collective investment vehicle is established.

However, if:

- a) at least 80 per cent of the value of the beneficial interests in the collective investment vehicle is owned by residents of the Contracting State in which the collective investment vehicle is established; or
- b) at least 90 per cent of the value of the beneficial interests in the collective investment vehicle is owned by equivalent beneficiaries,

the collective investment vehicle shall be treated as an individual who is a resident of the Contracting State in which it is established and as the beneficial owner of all the income it receives (provided that, if an individual who is a resident of that Contracting State had received the income in the same circumstances, such individual would have been considered to be the beneficial owner thereof).

5. For purposes of paragraph 4:

- a) the term “collective investment vehicle” means a vehicle that is widely-held, holds a diversified portfolio of securities or invests directly or indirectly in immovable property for the main purpose of deriving rent, and is subject to investor-protection regulation in the Contracting State in which it is established and is:
 - (i) in the case of Croatia, an investment fund or vehicle according to the Act on Open-Ended Investment Funds with a Public Offering, Alternative Investment Funds Act and any other law or regulation that may develop, replace or modify these laws in the future;
 - (ii) any other investment fund or vehicle established in either Contracting State which Croatia and New Zealand agree, in an Exchange of Notes through diplomatic channels, to regard as a collective investment vehicle; and
- b) the term “equivalent beneficiary” means a resident of the Contracting State in which the collective investment vehicle is established, and a resident of any other State with which the Contracting State in which the income arises has an income tax agreement that provides for effective and comprehensive information exchange who would, if such resident received the particular item of income for which benefits are being claimed under this Agreement, be entitled under that agreement, or under the domestic law of the Contracting State in which the income arises, to a rate of tax with respect to that item of income that is at least as low as the rate claimed under this Agreement by the collective investment vehicle with respect to that item of income.

Article 5
PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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. The term “permanent establishment” also encompasses:
 - a) a building site, or a construction, installation or assembly project, or supervisory activity in connection with that building site or construction, installation or assembly project, if it lasts more than 12 months;
 - b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12 month period commencing or ending in the taxable year concerned.
4. 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 more than 183 days in any 12 month period:
 - a) it carries on activities in that Contracting State which consist of, or which are connected with, the exploration for or exploitation of natural resources, including standing timber, situated in that Contracting State; or
 - b) it operates substantial equipment in that Contracting State.

5. For the sole purpose of determining whether the time period referred to in paragraphs 3 and 4 has been exceeded,
- a) where an enterprise of a Contracting State carries on activities referred to in paragraph 3 or 4 in the other Contracting State for a period of more than 30 days and these activities are carried on during periods of time that do not last more than the period stipulated in those paragraphs, and
 - b) connected activities are carried on in that other Contracting State during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on the activities referred to in paragraph 3 or 4.

6. 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;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),

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

7. Paragraph 6 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 this Article, 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 but subject to the provisions of paragraph 9, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so,
 - a) 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:
 - (i) in the name of the enterprise, or
 - (ii) 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
 - (iii) for the provision of services by that enterprise; or
 - b) manufactures or processes in a Contracting State for a closely related enterprise goods or merchandise belonging to 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 the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 7 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

- 9. Paragraph 8 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.
11. For the purposes of this Article, a person or enterprise 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 or enterprise 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 or enterprise 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 or in the two enterprises.

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 any natural resources, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed 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 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 of this Article 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 the 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, 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 beneficially owns (whether as a direct beneficiary of a trust or through one or more interposed trusts) a share of the profits of a business 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 has or would have, if it were a resident of the first-mentioned Contracting State, a permanent establishment in the other Contracting State,

then the business of the enterprise carried on by the trustee through such permanent establishment shall be deemed to be a business carried on in the other Contracting State by that resident through a permanent establishment situated in that other Contracting State and the resident's share of profits may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

- 7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.
- 8. Nothing in this Article shall affect any provisions of the laws of either Contracting State at any time in force as they affect the taxation of any income from any form of insurance.

Article 8

INTERNATIONAL SHIPPING AND AIR TRANSPORT

- 1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.
- 2. Notwithstanding the provisions of paragraph 1 of this Article and provisions of Article 7, profits of an enterprise of a Contracting State derived from carriage by ship or aircraft of passengers and cargo which are shipped or embarked in the other Contracting State and are discharged at a place in that other Contracting State, or for leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other Contracting State.

3. The provisions of paragraphs 1 and 2 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 Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

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, dividends paid by a company which is a resident of a Contracting State may also be taxed in that Contracting State 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:
 - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which, in the case of Croatia, holds directly at least 10 per cent of the capital or the voting power in the company resident of Croatia paying the dividends, or in the case of New Zealand, holds directly at least 10 per cent of the voting power in the company resident of New Zealand paying the dividends, throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);
 - b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. 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.
4. The provisions of paragraphs 1 and 2 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.
5. 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, interest arising in a Contracting State may also be taxed in that Contracting State 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. 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, as well as all other income treated as income from money lent by the tax laws of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.
4. The provisions of paragraphs 1 and 2 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.
5. 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 or deductible in determining the profits attributable to such permanent establishment, then such interest 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 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 Agreement.

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, royalties arising in a Contracting State may also be taxed in that Contracting State 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 10 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, trademark, design or model, plan, secret formula or process, or other like property or right;
 - b) the use of, or the right to use:
 - (i) motion picture films;
 - (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio, internet or other broadcasting;
 - c) the supply of scientific, technical, industrial, or commercial knowledge or information;
 - d) 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 b) or any such knowledge or information as is mentioned in subparagraph c);
 - e) 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 such royalties are borne by or deductible in determining the profits attributable to such permanent establishment, then such 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 the use, right or information for which they are 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 Agreement.

Article 13

ALIENATION OF PROPERTY

1. Income 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 or gains from the alienation of movable 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 or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Contracting State.
3. Income or gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.
4. Income or 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, as defined in Article 6, situated in that other Contracting State.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, 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 the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any 12 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 the other Contracting State, and
 - c) the remuneration is not borne by or deductible in determining the profits attributable to a permanent establishment which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned 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, or of a similar organ, 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 Article 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 resident'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 acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 17

PENSIONS

Pensions (including government service pensions) and other similar remuneration 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 (other than pensions) paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or a political subdivision or a local authority shall be taxable only in that Contracting State.
 - b) However, such payments shall be taxable only in the other Contracting State if the services are rendered in that Contracting State and the individual is a resident of that Contracting State who:
 - (i) is a national of that Contracting State; or
 - (ii) did not become a resident of that Contracting State solely for the purpose of rendering the services.

2. The provisions of Articles 14, 15, 16 and 17 shall apply to payments in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a 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 the individual's education or training receives for the purpose of the individual's maintenance, education or training shall not be taxed in that Contracting State, provided that such payments arise from sources outside that Contracting State.

Article 20 OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement 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 Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

Article 21 ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the laws of Croatia regarding the elimination of international double taxation (which shall not affect the general principle hereof), double taxation shall be eliminated in Croatia as follows:
 - a) Where a resident of a Croatia derives income which may be taxed in New

Zealand in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by New Zealand solely because the income is also income derived by a resident of New Zealand), Croatia shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in New Zealand. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in New Zealand.

- b) Where in accordance with any provision of the Agreement income derived by a resident of Croatia is exempt from tax in Croatia, Croatia may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted 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), Croatian tax paid under the laws of Croatia and consistent with this Agreement, in respect of income derived by a resident of New Zealand from sources in Croatia (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall (except to the extent that these provisions allow taxation by Croatia solely because the income is also income derived by a resident of Croatia) be allowed as a credit against New Zealand tax payable in respect of that income.

Article 22

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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
- 2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the Contracting State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.
- 3. 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. This provision shall not be construed as obliging a Contracting State to grant to 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 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 purpose 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.
5. 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.
6. This Article shall not apply to any provision of the laws of a Contracting State which:
 - a) is designed to prevent the avoidance or evasion of taxes;
 - b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting State under its laws;
 - c) provides for consolidation of group entities for treatment as a single entity for tax purposes provided that a company, being a resident of that 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, may access such consolidation treatment on the same terms and conditions as other companies that are residents of the first-mentioned Contracting State;
 - d) provides for the transfer of losses within a group of companies;
 - e) does not allow tax rebates, credits or an exemption in relation to dividends paid by a company that is a resident of that Contracting State for purposes of its tax;

- f) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Contracting States.
- 7. In this Article, provisions of the laws of a Contracting State which are designed to prevent avoidance or evasion of taxes include:
 - a) measures designed to address thin capitalisation and transfer pricing;
 - b) controlled foreign company and foreign investment fund rules; and
 - c) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures.
- 8. The provisions of this Article shall apply only to the taxes covered by Article 2.

Article 23

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 Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of the Contracting State of which that person is a resident or, if the case presented by that person comes under paragraph 1 of Article 22, to that of the Contracting State of which that person is a national. The competent authority of the Contracting State will notify or consult with the competent authority of the other Contracting State for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified. 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 Agreement.
- 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 Agreement. 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
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.

Article 24

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 Agreement 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 Agreement. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both Contracting States and the competent authority of the supplying Contracting State authorises such use.
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 (ordre public).
- 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 25

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. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
- 2. The term “revenue claim” as used in this Article means an amount owed in respect of 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 this Agreement 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.
- 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.

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. 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.
7. 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.

8. 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 (ordre public);
 - 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.

Article 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement 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 27

ENTITLEMENT TO BENEFITS

1. a) Where
 - (i) 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

- (ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits of this Agreement shall not apply to any item of income on which the tax in the third jurisdiction is less than the lower of 15 per cent of the amount of that item of income and 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 Agreement.

- b) The preceding provisions of this paragraph shall not apply if the income derived from the other Contracting State emanates from, 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).
 - c) If benefits under this Agreement are denied pursuant to the preceding provisions of this paragraph 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 this paragraph (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence shall consult with the competent authority of the other Contracting State before either granting or denying the request.
2. Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

Article 28

PROTOCOL

The attached Protocol shall be an integral part of this Agreement.

Article 29

ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other in writing, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Agreement.
2. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect:
 - a) in Croatia:
 - (i) in respect of withholding tax on income or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force;
 - (ii) in respect of other Croatian tax, for any taxable year beginning on or after 1 January next following the date on which the Agreement enters into force;
 - b) in New Zealand:
 - (i) in respect of withholding tax on income or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force;
 - (ii) in respect of other New Zealand tax, for any taxable year beginning on or after 1 April next following the date on which the Agreement enters into force.

Article 30

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

- a) in Croatia:

- (i) in respect of withholding tax on income or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given;
- (ii) in respect of other Croatian tax, for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice of termination is given;

b) in New Zealand:

- (i) in respect of withholding tax on income or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given;
- (ii) in respect of other New Zealand tax, for any taxable year beginning on or after 1 April in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

Done in two originals at _____ on this _____ day of _____ in the Croatian and English languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall prevail.

For New Zealand

For the Republic of Croatia

PROTOCOL

At the time of signing of the Agreement between the Republic of Croatia and New Zealand for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance, the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

1. With reference to paragraph 3 of Article 10 of the Agreement:

It is understood that the term “dividends” includes, in the case of New Zealand, income in relation to profit-related 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 Agreement.

2. With reference to Articles 10, 11 and 12:

It is understood that the Commentary to Articles 10, 11 and 12 of the OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017 on the meaning of the term “beneficial owner” shall apply. In particular, it is understood that:

- a) where the trustees of a discretionary trust do not distribute dividends, interest or royalties earned during a given period, these trustees, acting in their capacity as such, could constitute the beneficial owners of such income for the purposes of the relevant Article,
- b) a recognised pension fund, a collective investment vehicle and a non-profit organization can be a beneficial owner of the income, as the case may be.