

ARTICLE IV

(1) Where

(a) An enterprise of one of the Contracting Governments participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Government, or

(b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting Governments and an enterprise of the other Contracting Government, and

(c) 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 these conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

(2) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this paragraph.

(3) For the purpose of this Article an industrial or commercial enterprise or undertaking carried on by a United States citizen resident in New Zealand or by a United States corporation managed and controlled in New Zealand shall be deemed to be a New Zealand enterprise.

ARTICLE V

(1) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which an individual resident of New Zealand or a New Zealand corporation derives from operating ships or aircraft shall be exempt from United States tax.

(2) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which a citizen of the United States not resident in New Zealand or a United States corporation not resident in New Zealand derives from operating ships or aircraft shall be exempt from New Zealand tax.