

IRS News Release

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U.S. and New Zealand Reach Mutual Agreement Regarding Treatment of Income Derived Through Certain Fiscally Transparent Entities

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WASHINGTON — The Competent Authorities of the United States and New Zealand have entered into a mutual agreement to clarify the entitlement of members of certain fiscally transparent entities to benefits under the Convention between the United States of America and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on July 23, 1982, and as amended by Protocol signed on July 23, 1982, and as implemented in New Zealand by The Double Taxation Relief (United States of America) Order 1983 signed on July 23 1983.

It has come to the attention of the Competent Authorities that a resident of a Contracting State may derive income from the other Contracting State through an entity that is organized in, and treated as fiscally transparent by, the first Contracting State, but that is not treated as fiscally transparent by the other Contracting State.

Consistent with the approach taken in Article 4 (Residence) of the Convention, and pursuant to the authority of Article 24 (Mutual Agreement Procedure) of the Convention, the Competent Authorities agree that, in applying the Convention, income paid to and through such an entity is considered to be derived by a resident of the Contracting State to the extent of the share the resident has in the income.

For example, if a resident of the United States is a partner or member of an entity created or organized in the United States, under the law of the United States or any state of the United States, and the entity is treated for United States federal tax purposes as a partnership or is disregarded as an entity separate from its owner (e.g., a limited partnership; or a Limited Liability Company, including one owned by a single member), the resident of the United States would be afforded the benefits of the treaty on the income that the resident derives from New Zealand through the entity, even if under its domestic law New Zealand does not treat the entity as fiscally transparent. Consistent with Article 4 (1)(b) of the New Zealand/US treaty, the benefits extend to the income received by the fiscally transparent entity only to the extent of the resident's share of that income.