



## **ROYALTIES THAT QUALIFY FOR REDUCED RATES OF NRWT UNDER DOUBLE TAX AGREEMENTS**

1. A royalty, as defined for NZ domestic tax purposes, is non-resident passive income to which non-resident withholding tax (NRWT) applies. NRWT is a final tax only if the royalty is paid for the use, production, or reproduction of, or for the right to use, produce, or reproduce, a literary, dramatic, musical, or artistic work in which copyright subsists. Otherwise, NRWT is a minimum tax.
2. Despite NRWT being a minimum tax, if a maximum tax rate for certain types of royalties is specified in a double tax agreement, the specified maximum rate will apply for NZ tax purposes.
3. The maximum rates under double tax agreements do not apply if the royalties are derived in connection with a permanent establishment in NZ. In that case, the relevant rates are those applicable under NZ domestic tax law, subject to any relief available under the "Business Profits" article of the relevant double tax agreement.

### **"Royalty" for NZ domestic tax purposes**

4. For NZ tax purposes, a "royalty" includes a payment of any kind derived as consideration for:
  - (a) The use of, or right to use, a copyright, patent, plant variety rights, trademark, design or model, plan, secret formula or process, or other similar property or right.
  - (b) The use of, or right to use, a mine or quarry.
  - (c) The extraction, removal, or other exploitation of standing timber or a natural resource.
  - (d) The right to extract, to remove, or to otherwise exploit standing timber or a natural resource.
  - (e) The use of, or right to use, a film, videotape, or a tape in connection with radio broadcasting.
  - (f) The supply of scientific, technical, industrial or commercial knowledge or information.
  - (g) The total or partial forbearance of the use of, or of a grant of a right to use, a property or a right referred to in any of the paragraphs (a) to (e).
  - (h) The supply of assistance that enables the application or use of anything in any of paragraphs (a) to (f).
  - (i) The total or partial forbearance of the supply of knowledge or information or assistance referred to in paragraph (f) or (h).

5. For the purposes of the definition, it is not relevant how the payment is described or computed, or whether the payment is periodical or otherwise, or whether the payment is an instalment of the purchase price of any real or personal property.
6. Some income from a film right may possibly not be a royalty under New Zealand's domestic tax definition discussed above. Such income will be taxable under section CC 10 as income from a film right. However, income from a film right that is not a royalty for NZ domestic tax purposes may, nevertheless, be a royalty under a relevant double tax agreement, in which case the Royalties article in that agreement would apply.

### **Non-resident film renters**

7. A special rule previously applied in respect of royalties derived by a non-resident film renter. The non-resident film renter was taxed on 10% of the gross income, at the NZ tax rate that applies (i.e. company or trust or individual tax rate as applicable).
8. The Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 contains amendments that eliminated this special rule, so that the normal rules for royalties apply to income from film renting. The amendments apply from 2 November 2012, the date of assent of the amending Act.

### **Royalties under double tax agreements**

9. Generally not included within "royalties" for the purposes of double tax agreements, is the use of, or right to use, a mine or quarry, or the extraction or exploitation, or right to extract or exploit, standing timber or a natural resource. NRWT will remain a minimum tax on such payments. (Paragraphs (b), (c) and (d) of the NZ tax definition of "royalty".)

### **Specific definitions in double tax agreements**

10. **Australia:** The definition of royalties in Article 12 of the double tax agreement with Australia follows the NZ domestic tax definition, except for paragraphs (b), (c) and (d) as noted above. The maximum NRWT on royalties paid to an Australian resident is limited to 5%, which will be a final tax.
11. **Austria:** The maximum rate of 10% applies to payments relating to items in paragraphs (a), (e), (f), (g), (h) and (i) of the NZ domestic tax definition.
12. **Belgium:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment*.
13. **Canada:** The maximum rate of 15% applies not only to payments relating to items in paragraphs (a), (e) and (f) and (h) of the NZ domestic tax definition, but also to payments relating to *management services*.
14. **Chile:** The maximum rate of 5% (which has applied from 1 May 2010 under the "most favoured nation" clause in Article 10 of the Protocol) applies not only to payments relating to items in paragraphs (a), (e), (f), (g) and (i) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment*.

15. **China:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
16. **Czech Republic:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e), (f) and (h) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
17. **Denmark:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
18. **Fiji:** The maximum rate of 15% applies not only to payments relating to items in paragraphs (a), (e), (f) and (h) of the NZ domestic tax definition, but also to *payments for the use of or the right to use any industrial, agricultural, commercial or scientific equipment, or payments for the supply of management services.*
19. **Finland:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
20. **France:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment, only to the extent such payments are based on production, sales, results etc. related to the use of the equipment, but excluding payments received as consideration for technical services, including for scientific or geological studies or surveys, or for engineering contracts including blueprints, or for consultancy or supervisory services.*
21. **Germany:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment, only to the extent such payments are based on production, but excluding payments received as consideration for technical services, including for scientific or geological studies or surveys, or for engineering contracts including blueprints, or for consultancy or supervisory services.*
22. **Hong Kong:** The definition of royalties in Article 12 of the double tax agreement with Hong Kong follows the NZ domestic tax definition, except for paragraphs (b), (c) and (d) as previously noted in paragraph 6 above. Also included are payments relating to *the use of, or the right to use industrial, scientific or commercial equipment* and corresponding ancillary assistance or forbearance of use. The maximum NRWT on royalties paid to a resident of Hong Kong is limited to 5%, which will be a final tax.
23. **India:** Article 12 refers to “Royalties and fees for technical services”. The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to *fees for technical services* (but not including payments to an employee, or to any individual, for independent personal services in consideration for services of a managerial, technical or consultancy nature, or fees for the provision of services of technical or other personnel).

24. **Indonesia:** The maximum rate of 15% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
25. **Ireland:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
26. **Italy:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
27. **Japan:** Royalties are currently subject to tax according to NZ domestic tax rules. *A new double tax agreement was signed on 10 December 2012 that will come into force in New Zealand once New Zealand has given legal effect to it through an Order in Council. The new agreement provides for a maximum rate of NRWT on royalties of 5%. However, this applies only to the items in paragraphs (a) – excluding plant variety rights – and (f) of the NZ domestic tax definition, including the supply of assistance that is ancillary to such rights and the total or partial forbearance of the use or supply of such rights.*
28. **Korea:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment, only to the extent such payments are based on production, sales, results etc. related to the use of the equipment.*
29. **Malaysia:** The maximum rate of 15% applies not only to payments relating to items in paragraphs (a), (e), (f) and (h) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment and the management, control or supervision of a business or activity carried on by another enterprise.*
30. **Mexico:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e), (f), (g), (h) and (i) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment and the reception, right to receive, or use in connection with television or radio broadcasting, of visual images or sounds transmitted by satellite or cable, optical fiber or similar technology.*
31. **The Netherlands:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment only to the extent such payments are based on production, sales, results etc. related to the use of the equipment, but excluding payments received as consideration for technical services, including for scientific or geological studies or surveys, or for engineering contracts including blueprints, or for consultant or supervisory services.*
32. **Norway:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
33. **Papua New Guinea:** *A new agreement was signed on 29 October 2012 that will come into force in New Zealand once New Zealand has given legal effect to it through an Order in Council. The new agreement provides for a maximum rate of NRWT on royalties of 10%. However, this applies only to the items in paragraphs (a) – excluding plant variety rights – and (e) and (f) of*

the NZ domestic tax definition, including the supply of assistance that is ancillary to such rights and the total or partial forbearance of the use or supply of such rights.

34. **The Philippines:** The maximum rate of 15% applies not only to payments relating to items in paragraphs (a), (e), (f), (g), (h) and (i) of the NZ domestic tax definition, but also to payments that relate to *the use of, or the right to use industrial, commercial, or scientific equipment*.
35. **Poland:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e), (f), (g), (h) and (i) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment*.
36. **Russian Federation:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e), (f), (g), (h) and (i) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment*.
37. **Singapore:** The maximum rate of 5% applies not only to payments relating to items in paragraphs (a), (e), (f), (g) (h) and (i) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment*.
38. **South Africa:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e), (f), (g), (h) and (i) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment*.
39. **Spain:** The maximum rate of 10% applies only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition.
40. **Sweden:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e), (f) and (h) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment and payments for the supply of management services*.
41. **Switzerland:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment*.
42. **Taiwan:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment and the reception, right to receive, or use in connection with television or radio broadcasting, of visual images or sounds transmitted by satellite or cable, optical fiber or similar technology*.
43. **Thailand:** A maximum rate of 10% applies to payments relating to copyright and items referred to in paragraphs (e) of the NZ domestic tax definition, and to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment and the reception, right to receive, or use in connection with television or radio broadcasting, of visual images or sounds transmitted by satellite or cable, optical fiber or similar technology*. A maximum rate of 15% applies to the remaining items in paragraph (a) and the items in paragraphs (f) and (h) of the NZ domestic tax definition.
44. **Turkey:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e), (f), (g), (h) and (i) of the NZ domestic tax definition, but also to payments

relating to *the use of, or the right to use industrial, commercial, or scientific equipment* and *consideration from a sale that is not a genuine alienation of property.*

45. **United Arab Emirates:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e), (f), (g), (h) and (i) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
46. **United Kingdom:** The maximum rate of 10% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to payments relating to *the use of, or the right to use industrial, commercial, or scientific equipment.*
47. **United States:** The maximum rate of 5% applies not only to payments relating to items in paragraphs (a), (e) and (f) of the NZ domestic tax definition, but also to *income or gains from the alienation of any property or rights described in those paragraphs of the NZ domestic tax definition, to the extent that such income or gains are contingent on productivity, use or disposition of such property or rights.*