



**THE DOUBLE TAXATION RELIEF (UNITED KINGDOM)
ORDER 1966, AMENDMENT NO. 1**

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 10th day of November 1980

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 294 of the Income Tax Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. Title and commencement—(1) This order may be cited as the Double Taxation Relief (United Kingdom) Order 1966, Amendment No. 1, and shall be read together with and deemed part of the Double Taxation Relief (United Kingdom) Order 1966* (hereinafter referred to as the principal order).

(2) This order shall come into force in terms of Article 3 of the Schedule to this order.

2. Giving effect to protocol amending agreement—(1) Clause 2 of the principal order is hereby amended by omitting the words “the Schedule to this order”, and substituting the words “the First Schedule to this order, subject, in relation to Article VI and Article IX of that Agreement, to the provisions of the Protocol amending that Agreement as set out in the Second Schedule to this order”.

(2) The principal order is hereby further amended by adding the Second Schedule set out in the Schedule to this order.

SCHEDULE

SECOND SCHEDULE TO PRINCIPAL ORDER

"SECOND SCHEDULE

PROTOCOL

BETWEEN THE GOVERNMENT OF NEW ZEALAND AND
THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AMENDING
THE AGREEMENT FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME SIGNED AT
WELLINGTON ON 13 JUNE 1966

The Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude a Protocol to amend the Agreement between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Wellington on 13 June 1966 (hereinafter referred to as "the Agreement");

Have agreed as follows:

ARTICLE 1

Article VI of the Agreement shall be deleted and replaced by the following:

"ARTICLE VI

(1) (a) Dividends derived from a company which is a resident of the United Kingdom by a resident of New Zealand may be taxed in New Zealand.

(b) Where a resident of New Zealand is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount of the dividend and of that tax credit at a rate not exceeding 15 percent.

(c) Except as aforesaid dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of New Zealand shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) An individual who is a resident of New Zealand and who receives dividends from a company which is a resident of the United Kingdom shall, provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax. Any such credit may be treated for the purposes of New Zealand tax as assessable income from sources in the United Kingdom.

(3) Dividends derived from a company which is a resident of New Zealand and which are beneficially owned by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in New Zealand but the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

(4) The term "dividends" as used in this Article includes any item which, under the law of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(5) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the territories, carries on business in the other territory 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 a case, the provisions of Article III shall apply.

(6) If the beneficial owner of the dividends being a resident of one of the territories owns 10 percent or more of the class of shares in respect of which the dividends are paid and is not taxed on those dividends in that territory then paragraphs (1), (2) and (3) of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 percent or more of the class of shares in question. Provided that this paragraph shall apply only if the shares were acquired primarily for the purpose of securing the benefit of this Article and not for *bona fide* commercial reasons.

(7) Where a company which is a resident of one of the territories derives profits or income from the other territory, that other territory 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 territory or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other territory, 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 territory."

ARTICLE 2

Article IX of the Agreement shall be deleted and replaced by the following:

"ARTICLE IX

(1) Income or gains derived by a resident of one of the territories from the alienation of immovable property situated in the other territory may be taxed in that other territory.

(2) Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the territories has in the other territory or of movable property pertaining to a fixed base available to a resident of one of the territories in the other territory for the purpose of performing independent personal services including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base may be taxed in that other territory.

(3) Income or gains derived by a resident of one of the territories from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be exempt from tax in the other territory.

(4) Income or gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in one of the territories, may be taxed in that territory.

(5) Income or 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 territory of which the alienator is a resident."

ARTICLE 3

(1) This Protocol, which shall form an integral part of the Agreement, shall enter into force on the date when the last of all such things shall have been done in New Zealand and the United Kingdom as are necessary to give the Protocol the force of law in New Zealand and the United Kingdom respectively, and shall thereupon have effect:

(a) In the United Kingdom:

(i) In relation to dividends paid on or after 6 April 1978;

(ii) As regards Article 2 for any year of assessment or financial year beginning on or after 1 April 1978;

(b) In New Zealand for any income year beginning on or after 1 April 1978.

(2) Where any provision of the 1966 Agreement would have afforded any greater relief from tax any such provision as aforesaid shall continue to have effect:

(a) In the United Kingdom in relation to any year of assessment or financial year;

(b) In New Zealand for any income year;
beginning before the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at London this 25th day of March 1980.

For the Government of New Zealand:

"L. W. GANDAR".

For the Government of the United Kingdom of Great Britain and Northern Ireland:

"P. A. R. BLAKER".

P. G. MILLEN,
Clerk of the Executive Council.