

Serial Number 1948/98



THE DOUBLE TAXATION RELIEF (CANADA) ORDER 1948

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington, this 23rd day of
June, 1948

Present :

THE RIGHT HON. P. FRASER PRESIDING IN COUNCIL

PURSUANT to section 5 of the Land and Income Tax Amendment Act, 1946, and section 11 of the Land and Income Tax Amendment Act, 1935, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following Order.

ORDER

1. This Order may be cited as the Double Taxation Relief (Canada) Order 1948.

2. It is hereby declared that the arrangements specified in the agreement set out in the Schedule to this Order, being arrangements that have been made with the Government of Canada with a view to affording relief from double taxation in relation to income-tax and social security charge and taxes of a similar character imposed by the laws of Canada, shall, notwithstanding anything to the contrary in the Land and Income Tax Act, 1923, or the Social Security Act, 1938, or any other enactment, have effect in relation to income-tax and social security charge.

3. (1) The Income-tax (Canadian Traders) Exemption Order 1946* is hereby revoked.

(2) The revocation of the said Order shall not affect any exemption conferred thereby in respect of tax chargeable for the year of assessment commencing on the 1st day of April, 1948, or for any earlier year of assessment.

* Statutory Regulations 1946, Serial number 1946/71, page 144.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND
THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

THE Government of New Zealand and the Government of Canada, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:—

ARTICLE I

- (1) The taxes which are the subject of the present agreement are—
- (a) In Canada—
The income-taxes, including surtaxes imposed by the Government of Canada (hereinafter referred to as "Canadian tax").
- (b) In New Zealand—
The income-tax and the social security charge (hereinafter referred to as "New Zealand tax").
- (2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Agreement or by the Government of any territory to which the present Agreement is extended under Article XV.

ARTICLE II

- (1) In the present Agreement, unless the context otherwise requires—
- (a) The term "New Zealand" includes all islands and territories within the limits thereof for the time being, including the Cook Islands.
- (b) The terms "one of the territories" and "the other territory" mean New Zealand or Canada, as the context requires.
- (c) The term "tax" means New Zealand tax or Canadian tax, as the context requires.
- (d) The term "person" includes any body of persons, corporate or not corporate.
- (e) The term "company" includes any body corporate.
- (f) The terms "resident of New Zealand" and "resident of Canada" mean respectively any person who is resident in New Zealand for the purposes of New Zealand tax and not resident in Canada for the purposes of Canadian tax and any person who is resident in Canada for the purposes of Canadian tax and not resident in New Zealand for the purposes of New Zealand tax; and a company shall be regarded as resident in New Zealand if its business is managed and controlled in New Zealand and as resident in Canada if its business is managed and controlled in Canada.
- (g) The terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of New Zealand or a person who is a resident of Canada, as the context requires.
- (h) The terms "New Zealand enterprise" and "Canadian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of New Zealand and an industrial or commercial enterprise or undertaking carried on by a resident of Canada; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a New Zealand enterprise or a Canadian enterprise, as the context requires.
- (i) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) The term "industrial or commercial profits", as used in the present Agreement, includes manufacturing, mercantile, mining, financial, and farming profits but does not include income in the form of dividends, interest, rents or royalties, management charges, or remuneration for labour or personal services.

(3) The terms "New Zealand tax" and "Canadian tax", as used in the present Agreement, do not include any amount payable in New Zealand or Canada which represents a penalty imposed under the law of New Zealand or Canada relating to the taxes which are the subject of the present Agreement.

(4) In the application of the provisions of the present Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the taxes which are the subject of the present Agreement.

ARTICLE III

(1) The industrial or commercial profits of a New Zealand enterprise shall not be subject to Canadian tax unless the enterprise is engaged in trade or business in Canada through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Canada, but only on so much of them as is attributable to that permanent establishment :

Provided that nothing in this paragraph shall affect any provisions of the law of Canada regarding the taxation of income from the business of insurance.

(2) The industrial or commercial profits of a Canadian enterprise shall not be subject to New Zealand tax unless the enterprise is engaged in trade or business in New Zealand through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by New Zealand, but only on so much of them as is attributable to that permanent establishment :

Provided that nothing in this paragraph shall affect any provisions of the law of New Zealand regarding the taxation of income from the business of insurance.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall be deemed to be income derived from sources in that other territory.

If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this paragraph shall affect the application of the law of either territory in relation to the liability of the permanent establishment 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.

(4) Profits derived by an enterprise of one of the territories from sales, under contracts concluded in that territory, of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for the purposes of display shall not be attributed to a permanent establishment of the enterprise in that other territory notwithstanding that the offers of purchase have been obtained by an agent of the enterprise in that other territory and transmitted by him to the enterprise for acceptance.

(5) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be deemed to arise in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

(6) Where a company which is a resident of one of the territories derived profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

ARTICLE IV

(1) Where—
 (a) An enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
 (b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, 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 those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

(2) Profits included in the profits of an enterprise of one of the territories under paragraph (1) of this Article shall be deemed to be income derived from sources in that territory and shall be taxed accordingly.

(3) 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 that paragraph.

ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

ARTICLE VI

Copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including rents or royalties in respect of motion picture films) and derived from sources within one of the territories by a resident of the other territory who is liable to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

ARTICLE VII

(1) Remuneration (other than pensions) paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

(2) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

ARTICLE VIII

(1) An individual who is a resident of New Zealand shall be exempt from Canadian tax on profits or remuneration in respect of personal (including professional) services performed within Canada in any taxation year if—

- (a) He is present within Canada for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) The services are performed for or on behalf of a person resident in New Zealand, and
- (c) The profits or remuneration are subject to New Zealand tax.

(2) An individual who is a resident of Canada shall be exempt from New Zealand tax on profits or remuneration in respect of personal (including professional) services performed within New Zealand in any income year if—

(a) He is present within New Zealand for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) The services are performed for or on behalf of a person resident in Canada, and

(c) The profits or remuneration are subject to Canadian tax.

(3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

ARTICLE IX

(1) Any pension or annuity, derived from sources within Canada by an individual who is a resident of New Zealand and subject to New Zealand tax in respect thereof, shall be exempt from Canadian tax.

(2) Any pension or annuity, derived from sources within New Zealand by an individual who is a resident of Canada and subject to Canadian tax in respect thereof, shall be exempt from New Zealand tax.

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

ARTICLE X

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

ARTICLE XI

A student or business or trade apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

ARTICLE XII

Income of a person who is a resident of Canada (other than dividends paid by a company resident in New Zealand) which is exempt from New Zealand tax under any provision of the present Agreement shall not be included in that person's total income for the purposes of determining the amount of any New Zealand tax payable in respect of income of that person which is assessable to New Zealand tax.

ARTICLE XIII

(1) Subject to any provisions of the law of New Zealand regarding the allowance as a credit against New Zealand tax of tax payable in a territory outside New Zealand, Canadian tax payable in respect of income from sources within Canada shall be allowed as a credit against any New Zealand tax (other than social security charge) payable in respect of that income.

(2) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax in a territory outside Canada, New Zealand tax payable in respect of income from sources within New Zealand shall be deducted from any Canadian tax payable in respect of that income. Where such income is a dividend paid by a company resident in New Zealand to a company resident in Canada which owns 50 per cent. or more of the share capital of the New Zealand resident company, the New Zealand tax payable by the New Zealand resident company shall be deducted from any Canadian tax payable in respect of that income.

(3) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

ARTICLE XIV

(1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) The taxation authorities of the Contracting Governments may consult together as may be necessary for the purpose of carrying out the provisions of the present Agreement and, in particular, the provisions of Articles III and IV.

(3) As used in this Article, the term "taxation authorities" means, in the case of Canada, the Minister of National Revenue or his authorized representative; in the case of New Zealand, the Commissioner of Taxes or his authorized representative; and, in the case of any territory to which the present Agreement is extended under Article XV, the competent authority for the administration in such territory of the taxes to which the present Agreement applies.

ARTICLE XV

(1) Either of the Contracting Governments may, on the coming into force of the present Agreement or at any time thereafter while it continues in force, by a written notification of extension given to the other Contracting Government, declare its desire that the operation of the present Agreement shall extend, subject to such modification as may be necessary, to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate or trusteeship, or to all or any of the colonies, overseas territories, protectorates of the other Contracting Government, or territories in respect of which the other Contracting Government exercises a mandate or trusteeship, which impose taxes substantially similar in character to those which are the subject of the present Agreement. The present Agreement shall, subject to such modifications (if any) as may be specified in the notification apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than sixty days from the date of the notification) or, if no date is specified in respect of any such territory, on the sixtieth day after the date of the notification, unless, prior to the date on which the Agreement would otherwise become applicable to a particular territory, the Contracting Government to whom notification is given shall have informed the other Contracting Government in writing that it does not accept the notification as to that territory. In the absence of such extension, the present Agreement shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments may, by written notice of termination given to the other Contracting Government, terminate the application of the present Agreement to any territory to which it has been extended under paragraph (1), and in that event the present agreement shall cease to apply, six months after the date of the notice, to the territory or territories named therein, but without affecting its continued application to Canada, New Zealand or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present Agreement in relation to any territory to which it is extended by notification by New Zealand or Canada, references to "New Zealand" or, as the case may be, "Canada" shall be construed as reference to that territory.

(4) The termination in respect of Canada, or New Zealand of the present Agreement under Article XVIII shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of the present Agreement to any territory to which the Agreement has been extended by Canada or New Zealand.

ARTICLE XVI

The present Agreement shall come into force on the date on which the last of all such things shall have been done in New Zealand and Canada as are necessary to give the Agreement the force of law in New Zealand and Canada respectively, and shall thereupon have effect—

(a) In Canada as respects income taxes, including surtaxes, for the taxation year 1948 and subsequent years;

- (b) In New Zealand, as respects income-tax for the year of assessment beginning on the 1st day of April, 1949, and subsequent years; as respects social security charge on salaries and wages as from the first day of April, 1948; and as respects social security charge on income other than salaries and wages for the financial year beginning on the first day of April, 1948, and subsequent years.

ARTICLE XVII

The present Agreement shall be deemed to have superseded the Agreement made on the 3rd day of November, 1945, between the Government of New Zealand and the Government of Canada for reciprocal exemption from income tax in certain cases of profits or gains accruing through an agency, and that Agreement shall cease to have effect—

- (a) In Canada, for the taxation year 1948 and subsequent years;
 (b) In New Zealand for the year of assessment beginning on the 1st day of April, 1949, and subsequent years.

ARTICLE XVIII

(1) The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 30th day of June in any calendar year after the year 1949, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective—

- (a) In Canada, as respects income taxes, including surtaxes, for any taxation year ending in or after the calendar year next following that in which such notice is given;
 (b) In New Zealand, for any year of assessment beginning on or after the first day of April in the second calendar year following that in which such notice is given.

(2) The termination of the present Agreement shall not have the effect of reviving any agreement or arrangement abrogated by the present Agreement or by Agreements previously concluded between the Contracting Governments.

In witness whereof the undersigned, duly authorized thereto, have signed the present Agreement and have affixed thereto their seals.

Done at Ottawa, in duplicate, on the twelfth day of March, one thousand nine hundred and forty-eight.

For the Government of New Zealand :

(Signed) W. NASH.

For the Government of Canada :

(Signed) D. C. ABBOTT.

T. J. SHERRARD,
 Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 1st day of July, 1948.

These regulations are administered in the Land and Income Tax Department.