

1956/191



## THE DOUBLE TAXATION RELIEF (SWEDEN) ORDER 1956

C. W. M. NORRIE, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 21st day of November 1956

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to sections 171 and 172 of the Land and Income Tax Act 1954, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

### ORDER

1. (1) This order may be cited as the Double Taxation Relief (Sweden) Order 1956.

(2) This order shall come into force on the 22nd day of November 1956.

2. It is hereby declared that the arrangements specified in the Convention set out in the Schedule to this order, being arrangements that have been made with the Government of Sweden 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 Sweden, shall, notwithstanding anything to the contrary in the Land and Income Tax Act 1954 or the Social Security Act 1938, or any other enactment, have effect in relation to income tax and social security charge.

### SCHEDULE

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

THE Royal Government of Sweden and the Government of New Zealand, desiring to conclude a Convention 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 this Convention are—
- (a) In Sweden:  
The State income tax (including coupon tax), the tax on the undistributed profits of companies (*ersättningskatt*) and the municipal income tax (hereinafter collectively and severally referred to as “Swedish tax”).
- (b) In New Zealand:  
The income tax and the social security charge (hereinafter collectively and severally referred to as “New Zealand tax”).
- (2) This Convention shall also apply to any other taxes of a substantially similar character imposed in Sweden or New Zealand subsequently to the date of signature of this Convention or imposed in any territory to which this Convention is extended under Article XXI.

## ARTICLE II.

- (1) In this Convention, unless the context otherwise requires—
- (a) The term “New Zealand” means the metropolitan territory of New Zealand (including the outlying islands) and the Cook Islands (including Niue);
- (b) The terms “territory”, “one of the territories” and “the other territory” mean Sweden or New Zealand, as the context requires;
- (c) The term “tax” means Swedish tax or New Zealand tax, as the context requires;
- (d) The term “person” includes any body of persons, corporate or not corporate;
- (e) The term “company” means any body corporate;
- (f) The terms “resident of Sweden” and “resident of New Zealand” mean respectively any person who is resident in Sweden for the purposes of Swedish tax and not resident in New Zealand for the purposes of New Zealand tax and any person who is resident in New Zealand for the purposes of New Zealand tax and not resident in Sweden for the purposes of Swedish tax; a company shall be regarded as resident in Sweden if it is incorporated under the laws of Sweden and its business is not managed and controlled in New Zealand or if it is not so incorporated but its business is managed and controlled in Sweden; a company shall be regarded as resident in New Zealand if it is incorporated under the laws of New Zealand and its business is not managed and controlled in Sweden or if it is not so incorporated but its business is managed and controlled in New Zealand;
- (g) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of Sweden or a person who is a resident of New Zealand, as the context requires;
- (h) The terms “Swedish enterprise” and “New Zealand enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Sweden and an industrial or commercial enterprise or undertaking carried on by a

resident of New Zealand; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Swedish enterprise or a New Zealand enterprise, as the context requires;

- (i) The term "industrial or commercial enterprise or undertaking" includes an enterprise or undertaking engaged in mining, agricultural pastoral or forestry activities, or in the business of banking, insurance, life insurance or dealing in investments, and the term "industrial or commercial profits" includes profits from such activities or business but does not include income in the form of dividends, interest, rents, royalties, management charges, or remuneration for personal services. Subject to the provisions of this Convention such items of income shall be taxed separately or together with industrial and commercial profits in accordance with the laws of the Contracting Governments;
- (j) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch or other place of business and includes a management, factory, office, mine, quarry or other place of natural resources subject to exploitation as well as agricultural, pastoral or forestry property. It also includes a place where building construction is carried on or machinery or equipment is installed or used when such construction, installation or use is carried on or extends for a period of at least one year, but does not include an agency in the other territory unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of goods or merchandise in that other territory from which he regularly fills orders on its behalf. In this connection—
- (i) 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;
- (ii) 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;
- (iii) 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 carries on a 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;
- (k) Words in the singular include the plural, and words in the plural include the singular.

(2) The terms "Swedish tax" and "New Zealand tax", as used in this Convention, do not include any additional tax for late payment of tax or any penalty or additional tax imposed under the penal provisions of the laws of Sweden or of New Zealand relating to the taxes which are the subject of this Convention.

(3) In the application of the provisions of this Convention 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 in force in the territory of that Government relating to the taxes which are the subject of this Convention.

### ARTICLE III.

(1) The industrial or commercial profits of a New Zealand enterprise shall not be subject to Swedish tax unless the enterprise carries on a trade or business in Sweden through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Sweden, 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 Sweden regarding the taxation of income from the business of renting motion picture films or of insurance.

(2) The industrial or commercial profits of a Swedish enterprise shall not be subject to New Zealand tax unless the enterprise carries on a trade or business in New Zealand through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, 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 renting motion picture films or of insurance.

(3) Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise; 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) Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purpose of display, those profits 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 derived by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### 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 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 dealing at arm's length with one another, 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. In consequence the necessary rectifications should be made concerning the income of the other enterprise.

(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.

(1) The rate of Swedish tax on dividends derived from sources within Sweden by a resident of New Zealand who does not carry on a trade or business within Sweden through a permanent establishment situated therein shall not exceed 15 per cent.

(2) In the event that the Government of New Zealand should impose at any time tax on dividends derived from sources within New Zealand by a non-resident thereof, including a resident of Sweden who does not carry on a trade or business within New Zealand through a

permanent establishment situated therein, the Contracting Governments will enter into negotiations in order to establish new provisions concerning the taxation of such dividends as well as dividends derived from sources within Sweden by a resident of New Zealand.

(3) When a company which is a resident of Sweden derives dividends from sources within New Zealand the dividends thus derived shall be exempt from Swedish tax:

Provided that in accordance with the laws of Sweden the dividends would be exempt from tax if both companies had been resident there.

(4) In the event that the Government of New Zealand should impose at any time tax on dividends derived by a company which is a resident of New Zealand from sources outside New Zealand, including Sweden (other than social security charge) the Contracting Governments will enter into negotiations in order to establish new provisions concerning the taxation of such dividends as well as dividends derived from sources within New Zealand by a company which is a resident of Sweden.

#### ARTICLE VII.

(1) Where any interest is derived from sources within New Zealand by a resident of Sweden who does not carry on a trade or business in New Zealand through a permanent establishment situated therein, 60 per cent. of the amount of the interest shall be income assessable in New Zealand, the remaining 40 per cent. of the amount of the interest being exempt from tax in New Zealand:

Provided that the graduated rate of New Zealand tax imposed upon the income assessable in New Zealand in respect of the interest may be calculated on the basis that the whole amount of the interest is income assessable in New Zealand.

(2) Notwithstanding the provisions of paragraph (1) of this Article New Zealand social security charge may be levied on the basis that the whole amount of the interest referred to in that paragraph is income assessable in New Zealand.

(3) In this Article, the term "interest" includes interest on bonds, securities, notes, debentures or any other form of indebtedness.

#### ARTICLE VIII.

(1) Where any royalty is derived from sources within Sweden by a resident of New Zealand who does not carry on a trade or business in Sweden through a permanent establishment situated therein, 60 per cent. of the amount of the royalty shall be income assessable in Sweden, the remaining 40 per cent. of the amount of the royalty being exempt from tax in Sweden:

Provided that the graduated rate of Swedish tax imposed upon the income assessable in Sweden in respect of the royalty may be calculated on the basis that the whole amount of the royalty is income assessable in Sweden.

(2) Where any royalty is derived from sources within New Zealand by a resident of Sweden who does not carry on a trade or business in New Zealand through a permanent establishment situated therein, 60 per cent. of the amount of the royalty shall be income assessable in New Zealand, the remaining 40 per cent. of the amount of the royalty being exempt from tax in New Zealand:

Provided that the graduated rate of New Zealand tax imposed upon the income assessable in New Zealand in respect of the royalty may be calculated on the basis that the whole amount of the royalty is income assessable in New Zealand.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, New Zealand social security charge may be levied on the whole amount of the royalty referred to in each of those paragraphs.

(4) In this Article the term "royalty" means any royalty or other amount paid as consideration for the use of or for the privilege of using any copyright, patent, design, secret process or formula, trademark or other like property but does not include royalties or other amounts paid in respect of the operation of mines or quarries or of the extraction or removal of timber or other natural resources or royalties or other amounts paid in respect of motion picture films.

(5) Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein shall be exempt from tax in the first-mentioned territory.

#### ARTICLE IX.

(1) Income of whatever nature derived from real property within New Zealand (other than income from mortgages or bonds secured by real property but including profits from sales of land) by a resident of Sweden who is subject to tax in New Zealand in respect thereof shall be exempt from tax in Sweden.

(2) Any royalty or other amount paid in respect of the operation of a mine or quarry or of the extraction or removal of timber or other natural resources within New Zealand to a resident of Sweden who is subject to tax in New Zealand in respect thereof shall be exempt from tax in Sweden.

(3) Income of the kind referred to in the preceding paragraphs of this Article derived from sources within Sweden by a resident of New Zealand, shall be subject to Swedish tax. Such income shall be exempt from income tax in New Zealand.

#### ARTICLE X.

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer, or exchange of capital assets of any kind other than assets of the kind referred to in paragraph (1) of Article IX of this Convention.

#### ARTICLE XI.

Where under the provisions of this Convention a resident of New Zealand is exempt or entitled to relief from Swedish tax, similar exemption or relief shall be applied to the undivided estate of any deceased person in so far as one or more of the beneficiaries is a resident of New Zealand.

## ARTICLE XII.

(1) Remuneration (other than pensions) paid by one of the Contracting Governments to any individual in respect of services rendered to that 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 resident in that territory or is 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 XIII.

(1) An individual who is a resident of New Zealand shall be exempt from Swedish tax on remuneration or other income in respect of personal (including professional) services performed in Sweden in any income year if—

- (a) He is present within Sweden 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 resident of New Zealand, and
- (c) The remuneration or other income is subject to New Zealand tax.

(2) An individual who is a resident of Sweden shall be exempt from New Zealand tax on remuneration or other income in respect of personal (including professional) services performed in 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 resident of Sweden, and
- (c) The remuneration or other income is subject to Swedish tax.

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

## ARTICLE XIV.

(1) Any pension or annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and subject to tax in that other territory in respect thereof, shall be exempt from tax in the first-mentioned territory.

(2) 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 XV.

A professor or teacher from one of the territories who receives remuneration for teaching, during a period not exceeding two years, at a university or other similar establishment for higher education in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.



## ARTICLE XVI.

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 XVII.

(1) Individuals who are residents of Sweden shall be entitled to the same personal allowances, reliefs, and reductions for the purposes of New Zealand tax as New Zealand citizens not resident in New Zealand.

(2) Individuals who are residents of New Zealand shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swedish tax as those to which Swedish citizens not resident in Sweden may be entitled.

## ARTICLE XVIII.

(1) Income from sources within Sweden which under the laws of Sweden and in accordance with this Convention is subject to tax in Sweden either directly or by deduction shall be exempt from New Zealand income tax but shall be subject to New Zealand social security charge except in the cases where and to the extent that the income is exempt from New Zealand tax under the provisions of any other Article of this Convention.

(2) Income from sources within New Zealand which under the laws of New Zealand and in accordance with this Convention is subject to tax in New Zealand either directly or by deduction shall be exempt from Swedish tax.

(3) The special tax payable in Sweden by public entertainers such as theatre, television, and radio artists, musicians and athletes (bevillningsavgift for vissa offentliga forestallningar) shall be regarded, for the purpose of this Article, as Swedish tax.

(4) Where according to the provisions of Articles VII and VIII of this Convention the right to tax income mentioned therein is divided between the Contracting Governments, each Government shall from that part of the gross income which it has the right to tax allow the deductions which are in conformity with its law; but the amount deductible in either territory shall bear the same proportion to the total amount which would be deductible in that territory if the total amount of the gross income were assessable in that territory as the amount assessable in that territory bears to the total amount of the gross income.

(5) 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.

(6) The graduated rate of Swedish tax to be imposed on residents of Sweden may be calculated as though income exempted from tax under this Convention were included in the amount of the total income.

(7) The graduated rate of New Zealand tax to be imposed on residents of New Zealand may be calculated as though income exempted from tax under this Convention were included in the amount of the total income.

#### ARTICLE XIX.

(1) Any taxpayer who shows proof that the action of the taxation authorities of the Contracting Governments has, contrary to the provisions of this Convention, resulted in double taxation with respect to the taxes referred to in this Convention, may lodge a claim with the appropriate authority of the territory in which he resides. Should the claim be upheld, the competent authority of the Government of that territory may come to an agreement with the competent authority of the other Contracting Government with a view to the avoidance of the double taxation.

(2) The competent authorities of the Contracting Governments may likewise come to an agreement for the purpose of overcoming double taxation in cases not otherwise provided for by this Convention, as well as in the case where the interpretation or the application of this Convention gives rise to difficulties or doubts.

#### ARTICLE XX.

(1) The competent authorities of the Contracting Governments will exchange information of a fiscal nature which is available to them, or which they are able to obtain under their own legislation and which would be useful to assure the regular assessment and collection of the taxes referred to in this Convention, as well as the application with respect to those taxes of the legal provisions relating to the prevention of fiscal fraud. The information so exchanged shall retain its secret nature and shall not be disclosed to persons other than those charged with the assessment and collection of the taxes referred to in this Convention. The provisions of this Article shall not in any case be considered as requiring one of the Contracting Governments to disclose to the other Government information other than that which its own fiscal legislation permits it to obtain, or information the furnishing of which would involve the disclosure of industrial, commercial or professional secrets or trade processes. These provisions shall not be considered as imposing on either of the Contracting Governments an obligation to perform an administrative act which would be contrary to its regulations or practices.

(2) As used in this Convention, the term "competent authorities" means, in the case of Sweden, the Minister of Finance or his authorised representative; and in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative.

#### ARTICLE XXI.

(1) This Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations New Zealand is responsible and which imposes taxes substantially similar in character to those which are the subject of this Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed upon between the Contracting Governments in notes to be exchanged for this purpose.

(2) The termination in respect of Sweden or New Zealand of this Convention under Article XXIII shall, unless otherwise expressly agreed by both the Contracting Governments, terminate the application of this Convention to any territory to which the Convention has been extended under this Article.

#### ARTICLE XXII.

(1) This Convention shall be subject to ratification by the Contracting Governments. Ratification by His Majesty the King of Sweden shall be subject to the consent of the Riksdag.

(2) The instruments of ratification shall be exchanged at Wellington as soon as possible.

(3) This Convention shall come into force on the date on which the instruments of ratification are exchanged and shall thereupon have effect—

(a) In Sweden:

(i) As regards tax on income which is assessed in or after the calendar year beginning on the first day of January 1956, being income for which preliminary tax is payable during the period from the first day of March 1955 to the twentieth day of February 1956, or any succeeding period;

(ii) As regards coupon tax on dividends payable on or after the first day of January 1955.

(b) In New Zealand:

(i) As regards income tax for the year of assessment beginning on the first day of April 1956 and subsequent years;

(ii) As regards social security charge for the financial year beginning on the first day of April 1955 and subsequent years:

Provided that the provisions of paragraph (2) of Article III of this Convention in so far as they exempt from New Zealand tax profits derived by a Swedish enterprise from a trade or business carried on in New Zealand otherwise than through a permanent establishment situated therein shall have effect for the income year, or the financial year as the case may be, ended on the thirtyfirst day of March 1953 and subsequent years.

#### ARTICLE XXIII.

This Convention shall continue in effect indefinitely but either of the Contracting Governments may, on or before the thirtieth day of June in any calendar year after the year 1958 give to the other Government through diplomatic channels written notice of termination and, in such event, this Convention shall cease to be effective—

(a) In Sweden:

(i) As regards tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which the notice is given;

(ii) As regards coupon tax on dividends payable on or after the first day of January in the calendar year next following that in which the notice is given.

## (b) In New Zealand:

(i) As regards income tax on income derived in the income year next following the calendar year in which the notice is given and in subsequent income years;

(ii) As regards social security charge on income derived in the financial year next following the calendar year in which the notice is given and in subsequent financial years.

IN WITNESS whereof the undersigned being duly authorized thereto have signed this Convention and have affixed thereto their seals.

Done at Wellington, in duplicate, in the Swedish and the English languages, both texts being equally authentic, this 16th day of April one thousand nine hundred and fifty-six.

For the Government of Sweden:

[L.S.]

(Sgd.) B. G. JARNSTEDT.

For the Government of New Zealand:

[L.S.]

(Sgd.) T. L. MACDONALD.

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

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 22 November 1956.

These regulations are administered in the Inland Revenue Department.