

1960/67

THE DOUBLE TAXATION RELIEF (AUSTRALIA) ORDER 1960

H. E. BARROWCLOUGH, Administrator of the Government
ORDER IN COUNCIL

At the Government House at Wellington this 25th day of May 1960

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL

PURSUANT to sections 171 and 172 of the Land and Income Tax Act 1954, His Excellency the Administrator of the Government, 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 (Australia) Order 1960.

(2) This order shall come into force on the day after the date of its notification in the *Gazette*.

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 the Commonwealth of Australia with a view to affording relief from double taxation in relation to income tax and excess retention tax and taxes of a similar character imposed by the laws of Australia, shall, notwithstanding anything to the contrary in the Land and Income Tax Act 1954, or any other enactment, have effect in relation to income tax and excess retention tax.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA 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 the Commonwealth of Australia, 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 this Agreement are—

- (a) In Australia: The Commonwealth income tax and social services contribution, including the additional tax upon the undistributed amount of the distributable income of a private company;
- (b) In New Zealand: The income tax and excess retention tax.

(2) This Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting State subsequently to the date of signature of this Agreement.

ARTICLE II

(1) In this Agreement, unless the context otherwise requires—

- (a) “Australia” means the Commonwealth of Australia and includes Norfolk Island and the Territories of Cocos (Keeling) Islands and Christmas Island, but does not include the Territories of Papua and New Guinea;
- (b) “Australian enterprise” means an industrial or commercial enterprise carried on by an Australian resident;
- (c) “Australian resident” means a person who is a resident of Australia and is not resident in New Zealand;
- (d) “Australian tax” means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article I;
- (e) “Contracting State”, “one of the Contracting States” or “the other Contracting State” means Australia or New Zealand, as a political entity or geographical area, as the context requires;
- (f) “enterprise” includes undertaking;
- (g) “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean an Australian enterprise or a New Zealand enterprise, as the context requires;
- (h) “industrial or commercial profits” includes the profits of an industrial or commercial enterprise but does not include income in the form of dividends, interest, rents, royalties, management charges, remuneration for personal services, income derived from operating ships or aircraft, or income arising from, or in relation to, contracts or obligations to provide the services of public entertainers such as stage, motion picture, television or radio artists, musicians and athletes;
- (i) “New Zealand” includes all islands and territories within the limits thereof for the time being, but does not include the Cook Islands other than Niue;
- (j) “New Zealand enterprise” means an industrial or commercial enterprise carried on by a New Zealand resident;
- (k) “New Zealand resident” means a person who is resident in New Zealand and is not a resident of Australia;
- (l) “New Zealand tax” means tax imposed by New Zealand, being tax to which this Agreement applies by virtue of Article I;

- (m) "permanent establishment" means a branch, agency or other place of business, and includes—
- (i) a management;
 - (ii) a factory, workshop or office;
 - (iii) a mine, quarry, oilwell or other place of natural resources subject to exploitation;
 - (iv) an agricultural, pastoral or forestry property; or
 - (v) a construction project or the use or installation of substantial equipment or machinery by, for, or under contract with, an enterprise of one of the Contracting States;
- but where an enterprise of one of the Contracting States—
- (vi) carries on business dealings in the other Contracting State through a bona fide commission agent or broker acting in the ordinary course of his business as such and receiving remuneration in respect of those dealings at the rate customary in the class of business in question; or
 - (vii) maintains in that other State a place of business exclusively for the purchase of goods or merchandise; or
 - (viii) has a subsidiary company which is engaged in trade or business in that other State, whether through a permanent establishment or otherwise; or
 - (ix) has an agent in that other State other than an agent who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of that enterprise, or regularly fills orders on its behalf from a stock of goods or merchandise located in that other State,
- that enterprise shall not, merely by reason thereof, be deemed to have a permanent establishment in that other Contracting State;
- (n) "person" includes any body of persons, corporate or not corporate;
- (o) "resident in New Zealand" has the meaning which it has under the laws of New Zealand relating to New Zealand tax;
- (p) "resident of Australia" has the meaning which it has under the laws of Australia relating to Australian tax;
- (q) "resident of one of the Contracting States" and "resident of the other Contracting State" mean an Australian resident or a New Zealand resident, as the context requires;
- (r) "tax" means Australian tax or New Zealand tax, as the context requires;
- (s) "taxation authority" means, in the case of Australia, the Commissioner of Taxation or his authorised representative; in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;
- (t) words in the singular include the plural, and words in the plural include the singular.

(2) Where an enterprise of one of the Contracting States sells goods manufactured, assembled, processed, packed or distributed in the other Contracting State by an industrial or commercial enterprise for, or at,

or to the order of, that first-mentioned enterprise and either enterprise participates in the management, control or capital of the other enterprise, then, for the purposes of this Agreement that first-mentioned enterprise shall be deemed to have a permanent establishment in the other Contracting State and to be engaged in trade or business in the other Contracting State through that permanent establishment.

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

ARTICLE III

(1) An Australian enterprise shall not be subject to New Zealand tax in respect of its industrial or commercial profits unless it is engaged in trade or business in New Zealand through a permanent establishment in New Zealand. If it is so engaged, New Zealand tax may be imposed upon the entire income of the enterprise from sources within New Zealand: Provided that nothing in this paragraph shall affect the operation of the provisions of the law of New Zealand for the time being in force relating to the taxation of income from the renting of motion picture films or from insurance with persons not resident in New Zealand.

(2) A New Zealand enterprise shall not be subject to Australian tax in respect of its industrial or commercial profits unless it is engaged in trade or business in Australia through a permanent establishment in Australia. If it is so engaged, Australian tax may be imposed upon the entire income of the enterprise from sources within Australia: Provided that nothing in this paragraph shall affect the operation of Divisions 14 and 15 of Part III. of the Income Tax and Social Services Contribution Assessment Act 1936-1959 of the Commonwealth of Australia (or that Act as amended from time to time) relating to film business controlled abroad and insurance with non-residents or the corresponding provisions of any statute substituted for that Act.

(3) Where an enterprise of one of the Contracting States is engaged in trade or business in the other Contracting State through a permanent establishment in that other Contracting State, there shall be attributed to that permanent establishment the industrial or commercial profits which that permanent establishment might be expected to derive in that other Contracting State 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 or an independent enterprise; and the profits so attributed shall be deemed to be income derived from sources in that other Contracting State and shall be taxed accordingly.

(4) If the information available to the taxation authority of the Contracting State concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of any law of that Contracting State in relation to the liability of the enterprise to pay tax, in respect of the permanent establishment, on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority

of that State: Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principles stated in this Article.

(5) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the Contracting States shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase by that enterprise of the goods or merchandise within that other Contracting State.

ARTICLE IV

(1) Where—
(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State; and
(c) in either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length with one another,
then, if by reason of those circumstances profits which might be expected to accrue to the enterprise of one of the Contracting States from sources in that Contracting State do not accrue to that enterprise, there may be included in the profits of that enterprise the profits which might have been expected so to accrue to it if it were an independent enterprise engaged in the same or similar activities and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

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

(3) If the information available to the taxation authority of a Contracting State is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might have been expected to accrue to an enterprise, nothing in this Article shall affect the application of any law of that Contracting State 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 Contracting State: Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principles stated in this Article.

ARTICLE V

Profits which a resident of one of the Contracting States derives from operating ships whose port of registry is in that Contracting State, or from operating aircraft registered in that Contracting State, shall be exempt from tax in the other Contracting State.

ARTICLE VI

(1) A dividend paid by a company which is a New Zealand resident to a person who is not a resident of Australia shall be exempt from Australian tax.

(2) A dividend paid by a company which is an Australian resident to a person who is not resident in New Zealand shall be exempt from New Zealand tax.

ARTICLE VII

(1) The amount of Australian tax on a dividend paid by a company which is a resident of Australia to a New Zealand resident who is not engaged in trade or business in Australia through a permanent establishment in Australia shall not exceed 15 per centum of the dividend.

(2) The amount of New Zealand tax on a dividend paid by a company which is resident in New Zealand to an Australian resident who is not engaged in trade or business in New Zealand through a permanent establishment in New Zealand shall not exceed 15 per centum of the dividend.

ARTICLE VIII

(1) Remuneration (other than pensions) paid by the Government of the Commonwealth of Australia or of any State of Australia to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from New Zealand tax if the individual is not resident in New Zealand or is resident in New Zealand solely for the purpose of rendering those services.

(2) Remuneration (other than pensions) paid by the Government of New Zealand to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Australian tax if the individual is not a resident of Australia or is resident in Australia solely for the purpose of rendering those services.

(3) 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 a Government.

ARTICLE IX

Royalties (not being royalties in relation to motion picture or television films or the reproduction by any means of the images in those films or of the sounds produced for or directly or indirectly from those films) for the use, production or reproduction of, or for the privilege of using, producing or reproducing, a literary, dramatic, musical or artistic work in which copyright subsists, being royalties derived from sources within one of the Contracting States by a resident of the other Contracting State not engaged in trade or business in the former Contracting State through a permanent establishment in that Contracting State, shall be exempt from tax in the former Contracting State.

ARTICLE X

(1) Any pension or annuity derived from sources within one of the Contracting States by an individual who is a resident of the other Contracting State and subject to tax in that other Contracting State in respect thereof shall be exempt from tax in the former Contracting State.

(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 XI

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

- (a) he is present in New Zealand for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of an Australian resident; and
- (c) that remuneration or income will upon the application of this Article be subject to Australian tax.

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

- (a) he is present in Australia for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a New Zealand resident; and
- (c) that remuneration or income will upon the application of this Article be subject to New Zealand tax.

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

ARTICLE XII

Where a professor or teacher, who is a resident of one of the Contracting States, is temporarily present in the other Contracting State for the purpose of teaching during a period not exceeding two years at a university, college, school or other educational institution in that other Contracting State, remuneration derived by him for so teaching for that period of temporary presence shall be exempt from tax in that other Contracting State.

ARTICLE XIII

(1) Subject to such provisions as may be enacted in New Zealand relating to the allowance of a credit against tax payable in New Zealand of tax paid in a country outside New Zealand, Australian tax paid in respect of income from sources within Australia shall be allowed as a credit against New Zealand tax payable in respect of that income.

(2) Subject to any provisions of the law of Australia which may from time to time be in force and which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia, New Zealand tax paid in respect of income derived by a resident of Australia from sources in New Zealand shall be allowed as a credit against Australian tax payable in respect of that income.

(3) For the purposes of this Article—

- (a) profits, remuneration or other income in respect of personal (including professional) services performed in one of the Contracting States shall be deemed to be income derived from sources in that Contracting State;
- (b) an amount included in taxable income under the provisions of the law of New Zealand for the time being in force relating to the taxation of income from the renting of motion picture films or from insurance with persons not resident in New Zealand shall be deemed to be derived from sources in New Zealand;
- (c) an amount included in taxable income under Division 14 or 15 of Part III. of the Income Tax and Social Services Contribution Assessment Act 1936–1959 of the Commonwealth of Australia, or that Act as amended from time to time, or the corresponding provisions of a statute substituted for that Act, shall be deemed to be income derived from sources in Australia; and
- (d) the terms “Australian tax” and “New Zealand tax” do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE XIV

Income of a person who is a resident of Australia which is exempt from New Zealand tax under any provision of this 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 XV

(1) The taxation authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes which are the subject of this Agreement.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or a reviewing authority) concerned with the assessment or collection of the taxes which are the subject of this Agreement, or the determination of appeals in relation thereto.

(3) No information shall be exchanged which would disclose any trade secret or trade process.

ARTICLE XVI

The taxation authority of a Contracting State may communicate directly with the taxation authority of the other Contracting State for the purpose of giving effect to the provisions of this Agreement.

ARTICLE XVII

(1) This Agreement shall come into force on the date on which the last of all such things shall have been done in Australia and New Zealand as are necessary to give the Agreement the force of law in Australia and New Zealand so far as its provisions affect Australian tax and New Zealand tax respectively and shall thereupon have effect—

(a) as regards Australian tax, for the year of income that commenced on the first day of July, 1959, and subsequent years of income; and

(b) as regards New Zealand tax, for the income year that commenced on the first day of April, 1959, and subsequent income years.

(2) This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of September in any calendar year after the year 1962, give to the other Contracting State notice of termination and, in that event, this Agreement shall not be effective—

(a) as regards Australian tax, for the year of income next succeeding that in which notice of termination is given or subsequent years of income; and

(b) as regards New Zealand tax, for the income year next succeeding that in which notice of termination is given or subsequent income years.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done at Canberra in duplicate this twelfth day of May, One thousand nine hundred and sixty.

F. JONES
For the Government
of New Zealand

HAROLD HOLT
For the Government of the
Commonwealth of Australia

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

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 26 May 1960.

These regulations are administered in the Inland Revenue Department.