

1963/49



THE DOUBLE TAXATION RELIEF (JAPAN) ORDER 1963

BERNARD FERGUSSON, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 8th day of April 1963

Present:

THE RIGHT HON. KEITH HOLYOAKE, C.H., PRESIDING 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 (Japan) Order 1963.

(2) This order shall come into force on the 19th day of April 1963.

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

SCHEDULE

CONVENTION BETWEEN NEW ZEALAND AND JAPAN FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE PRE-
VENTION OF FISCAL EVASION WITH RESPECT TO TAXES
ON INCOME

THE Government of New Zealand and the Government of Japan,

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 the present Convention are—

(a) In Japan:

The income tax and the corporation tax.

(b) In New Zealand:

The income tax and the excess retention tax.

(2) The present Convention shall also apply to any other taxes on income or profit which are of a substantially similar character to those referred to in the preceding paragraph and which may be imposed by either Contracting State after the date of signature of the present Convention.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(a) The term “Japan”, when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced;

(b) The term “New Zealand”, when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) and excludes the Cook Islands (including Niue);

(c) The terms “one of the Contracting States” and “the other Contracting State” mean New Zealand or Japan, as the context requires;

(d) The term “New Zealand tax” means tax imposed by New Zealand being tax to which the present Convention applies by virtue of Article I; and the term “Japanese tax” means tax imposed by Japan being tax to which the present Convention applies by virtue of Article I;

(e) The term “tax” means New Zealand tax or Japanese tax, as the context requires;

(f) The term “New Zealand corporation” means any company the business of which is managed and controlled in New Zealand and which does not have its head or main office in Japan; and the term “Japanese corporation” means any corporation or other association having juridical personality or any association without juridical personality which has its head or main office in Japan and the business of which is not managed and controlled in New Zealand;

SCHEDULE—*continued*

- (g) The terms “corporation of one of the Contracting States” and “corporation of the other Contracting State” mean a New Zealand corporation or a Japanese corporation, as the context requires;
- (h) The term “resident of New Zealand” means any person other than a company who is resident in New Zealand for the purposes of New Zealand tax and not resident in Japan for the purposes of Japanese tax and any New Zealand corporation; and the term “resident of Japan” means any individual who is resident in Japan for the purposes of Japanese tax and not resident in New Zealand for the purposes of New Zealand tax and any Japanese corporation;
- (i) The terms “resident of one of the Contracting States” and “resident of the other Contracting State” mean a resident of New Zealand or a resident of Japan, as the context requires;
- (j) The term “New Zealand enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of New Zealand; and the term “Japanese enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of Japan;
- (k) The terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean a New Zealand enterprise or a Japanese enterprise, as the context requires;
- (l) The term “industrial or commercial enterprise or undertaking” includes an enterprise or undertaking engaged in mining, agricultural, fishing, 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, fees for technical services, management charges, remuneration for personal services or income arising from, or in relation to, contracts or obligations to provide the services of public entertainers such as stage, motion picture, radio or television artists, musicians and athletes;
- (m) (i) The term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on;
- (ii) A permanent establishment shall include especially:
- (aa) a place of management;
 - (bb) a branch;
 - (cc) an office;
 - (dd) a factory;
 - (ee) a workshop;
 - (ff) a warehouse;
 - (gg) a mine, quarry or other place of natural resources subject to exploitation;

SCHEDULE—*continued*

- (hh) an agricultural, pastoral or forestry property;
- (jj) a building site or construction or assembly project which exists for more than twelve months;
- (iii) Where the business of an enterprise of one of the Contracting States is of a mobile nature the place where such business is being carried on in the other Contracting State shall be deemed to be a fixed place of business;
- (iv) A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the former Contracting State if—
 - (aa) the person has and habitually exercises in the former Contracting State a general authority to negotiate and conclude contracts on behalf of such enterprise, unless the activities of such person are limited to the purchase of goods or merchandise on behalf of such enterprise; or
 - (bb) the person habitually maintains in the former Contracting State a stock of goods or merchandise belonging to such enterprise from which such a person regularly fills orders on behalf of such enterprise; or
 - (cc) the person habitually secures orders in the former Contracting State, exclusively or almost exclusively, for the enterprise itself or for such enterprise and other enterprises which are controlled by it or have a controlling interest in it;
- (v)
 - (aa) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business dealings in that other Contracting State through a bona fide broker or general commission agent or other agent of independent status acting in the ordinary course of his business as such;
 - (bb) The fact that an enterprise of one of the Contracting States maintains in the other Contracting State a fixed place of business solely for the purpose of purchase, storage or delivery of goods or merchandise, or for collecting information shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
 - (cc) The fact that a corporation of one of the Contracting States has a subsidiary corporation which is a corporation of the other Contracting State or which carries on a trade or business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation;

SCHEDULE—*continued*

- (vi) Where an enterprise of one of the Contracting States sells to a resident of the other Contracting State goods manufactured, assembled, processed, packed or distributed in the other Contracting State by an industrial or commercial enterprise or undertaking for, or at or to the order of, that first mentioned enterprise and that first mentioned enterprise participates in the management, control or capital of that other enterprise or undertaking, then, for the purpose of the present Convention, 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;
- (n) The term “competent authorities” means, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative; and, in the case of Japan, the Minister of Finance or his authorised representative;
- (o) Words in the singular include the plural and words in the plural include the singular.

(2) In the application of the provisions of the present Convention by either Contracting State 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 the present Convention.

ARTICLE III

(1) (a) The industrial or commercial profits (excluding profits derived from the operation of ships or aircraft) of a New Zealand enterprise shall not be subject to Japanese tax unless the enterprise carries on a trade or business in Japan through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Japan, but only on so much of them as is attributable to that permanent establishment.

(b) The industrial or commercial profits (excluding profits derived from the operation of ships or aircraft) of a Japanese 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.

(c) Nothing in subparagraphs (a) and (b) of this paragraph shall affect any provisions of the law of either Contracting State regarding the taxation of income from the business of renting motion picture films or of insurance.

(2) (a) Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it

SCHEDULE—*continued*

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.

(b) If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in subparagraph (a) of this paragraph shall affect the application of the law of either Contracting State 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 Contracting State:

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 the said subparagraph.

(3) In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, including executive and general administrative expenses so deductible, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere:

Provided that only such deductions shall be allowed as are of a substantially similar nature to deductions allowable under the law of the Contracting State in which the permanent establishment is situated.

(4) Where an enterprise of one of the Contracting States derives profits under contracts concluded in that Contracting State, from sales of goods or merchandise stocked in a warehouse in the other Contracting State 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 Contracting State notwithstanding that the offers of purchase have been obtained by an agent of the enterprise in that other Contracting State and transmitted by him to the enterprise for acceptance.

(5) No portion of any profits derived 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 of goods or merchandise within that other Contracting State by the enterprise.

ARTICLE IV

(1) Where:

- (a) an enterprise of one of the Contracting States participates directly or indirectly in the managerial or financial control of an enterprise of the other Contracting State, or
- (b) the same individuals or corporations participate directly or indirectly in the managerial or financial control of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

SCHEDULE—*continued*

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.

(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 derived from sources in that Contracting State 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 the said paragraph shall affect the application of the law of either 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 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 the said paragraph.

ARTICLE V

(1) The profits which an enterprise of one of the Contracting States derives from the operation of aircraft shall be exempt from tax of the other Contracting State unless the aircraft are operated wholly or mainly between places within that other Contracting State.

(2) The amount of tax imposed by one of the Contracting States on profits which an enterprise of the other Contracting State derives from the operation of ships shall be reduced by an amount equal to 50% thereof unless the ships are operated wholly or mainly between places within the former Contracting State.

ARTICLE VI

(1) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 15% unless such dividends arise in connection with a trade or business carried on by that resident through a permanent establishment situated in the former Contracting State.

(2) Dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State.

ARTICLE VII

Income of whatever nature derived from real property within one of the Contracting States by a resident of the other Contracting State and 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 one of the Contracting States to a resident of the other

SCHEDULE—*continued*

Contracting State shall be subject to tax in accordance with the laws of the Contracting State in which the real property, mine, quarry, standing timber or other natural resources, as the case may be, are situated.

ARTICLE VIII

(1) (a) Remuneration (other than pensions) paid by the Government of Japan to any individual in respect of 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.

(b) Remuneration (other than pensions) paid by the Government of New Zealand to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from Japanese tax, if the individual is not a national of Japan or is not admitted to Japan for permanent residence therein.

(2) The provisions of paragraph (1) 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 States for purposes of profit.

ARTICLE IX

(1) (a) Pensions and other similar remuneration derived from sources within Japan by an individual who is resident in New Zealand and subject to New Zealand tax in respect thereof shall be exempt from Japanese tax.

(b) The provisions of subparagraph (a) of this paragraph shall not apply to pensions or other similar remuneration paid to any individual in respect of services rendered to the Government of Japan in the discharge of governmental functions and such pension or other similar remuneration shall be exempt from New Zealand tax.

(2) Pensions and other similar remuneration derived from sources within New Zealand by an individual who is resident in Japan and subject to Japanese tax in respect thereof shall be exempt from New Zealand tax.

ARTICLE X

(1) An individual who is a resident of one of the Contracting States shall be exempt from tax of the other Contracting State on remuneration for personal (including professional) services performed within that other Contracting State in any taxable or income year if—

(a) he is present within that other Contracting State 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 the former Contracting State, and

(c) the remuneration or other income is subject to tax in the Contracting State in which that individual is resident.

(2) The provisions of paragraph (1) of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture, radio or television artists, musicians and athletes.

SCHEDULE—*continued*

ARTICLE XI

A professor or teacher from one of the Contracting States who visits the other Contracting State for a period not exceeding two years for the purpose of teaching at a university or similar establishment for higher education in that other Contracting State, shall be exempt from tax of that other Contracting State in respect of remuneration for that teaching.

ARTICLE XII

A student or business or trade apprentice from one of the Contracting States, who is receiving full-time education or training in the other Contracting State, shall be exempt from tax in that other Contracting State on payments made to him by a resident of the former Contracting State for the purposes of his maintenance, education or training.

ARTICLE XIII

(1) Subject to such provisions of the laws of New Zealand which may from time to time be in force relating to the allowance as a credit against New Zealand tax of tax payable in any country other than New Zealand, Japanese tax payable under the laws of Japan and in accordance with the present Convention, whether directly or by deduction, in respect of income from sources within Japan shall be allowed as a credit against New Zealand tax payable in respect of that income.

(2) Subject to such provisions of the laws of Japan which may from time to time be in force relating to the allowance as a credit against Japanese tax of tax payable in any country other than Japan, New Zealand tax payable under the laws of New Zealand and in accordance with the present Convention, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against Japanese tax payable in respect of that income.

(3) For the purposes of paragraphs (1) and (2) of this Article, profits or remuneration for personal (including professional) services performed in one of the Contracting States shall be deemed to be income from sources within that Contracting State, 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 Contracting States shall be deemed to be performed in that Contracting State, unless the ships or aircraft are operated wholly or mainly between places within the other Contracting State.

ARTICLE XIV

The competent authorities of both Contracting States shall exchange such information available under their respective tax laws in the normal course of administration as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those, including a court or reviewing authority, concerned with the assessment and collection of the tax or the determination of appeal in relation thereto. No information shall be exchanged which discloses any trade, business, industrial or professional secret or any trade process.

SCHEDULE—*continued*

ARTICLE XV

Any taxpayer, who shows proof that the action of the taxation authorities of either Contracting State has resulted or will result in double taxation contrary to the provisions of the present Convention, may lodge a claim with the competent authorities of the Contracting State of which that taxpayer is a resident. Should the claim be deemed justified, such competent authorities shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to avoidance of the double taxation in question.

ARTICLE XVI

Should any difficulty or doubt arise as to the interpretation or application of the present Convention, the competent authorities of the Contracting States may settle the question by mutual agreement. It is understood, however, that the foregoing provision shall not be construed to preclude the Contracting States from settling by negotiation through diplomatic channels any dispute arising under the present Convention.

ARTICLE XVII

(1) The provisions of the present Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in determining the tax of that Contracting State.

(3) The competent authorities of either Contracting State may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

ARTICLE XVIII

(1) Individuals who are residents of Japan 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 Japanese tax as Japanese nationals not resident in Japan.

ARTICLE XIX

(1) The present Convention shall be ratified by the Contracting States and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

(2) The present Convention shall come into force on the date of exchange of instruments of ratification and shall have effect—

(a) In Japan:

As regards income derived during the taxable years beginning on or after the first day of January in the calendar year in which the present Convention comes into force.

SCHEDULE—*continued*

(b) In New Zealand:

As regards income derived during the income years beginning on or after the first day of April in the calendar year in which the present Convention comes into force.

(3) At any time after the expiration of a period of three years from the date of coming into force of the present Convention either Contracting State may give to the other Contracting State notice of its desire to review the terms of the Convention. In such case the two Contracting States shall hold the review requested; this shall take place at such time and place as may be convenient to the Contracting States but not later than six months from the date on which the said notice is received. The foregoing provisions shall not be deemed to prevent the Contracting States from entering into negotiations at any time during the period of three years from the date of coming into force of the present Convention on any amendment to the Convention which may become desirable before the expiration of such period.

(4) In any year after the expiration of a period of three years from the date of coming into force of the present Convention either Contracting State may give to the other Contracting State notice of intention to terminate the Convention. Such notice must, however, be transmitted to the other Contracting State on or before the thirtieth day of June in the year in which it is given and in such event the present Convention shall cease to be effective—

(a) In Japan:

As regards income derived during the taxable years beginning 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:

As regards income derived during the income years beginning on or after the first day of April in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Wellington, in duplicate, in the English and Japanese languages, each text having equal authenticity, this 30th day of January, 1963.

For the Government of New Zealand:

(Signed) KEITH HOLYOAKE.

For the Government of Japan:

(Signed) KAORU HARA.

[L.S.] [L.S.]

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

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 10 April 1963.

These regulations are administered in the Inland Revenue Department.