



THE DOUBLE TAXATION RELIEF (SWEDEN) ORDER 1980

KEITH HOLYOAKE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 20th day of October 1980

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

ORDER

1. Title and commencement—(1) This order may be cited as the Double Taxation Relief (Sweden) Order 1980.

(2) This order shall come into force on the 1st day of April 1981.

2. Double taxation convention—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 excess retention tax imposed under the Income Tax Act 1976 and the State income tax (including the sailor's tax and the coupon tax), the tax on the undistributed profits of companies, the tax on public entertainers and the communal income tax imposed by the laws of Sweden, shall in relation to income tax and excess retention tax imposed under that Act, and notwithstanding anything in that Act or any other enactment, have effect according to the tenor of the convention.

3. Revocation and savings—The Double Taxation Relief (Sweden) Order 1956 is hereby revoked:

Provided that in respect of all taxes and charges to which the convention set out in the Schedule to that order is expressed to apply, that order shall, notwithstanding its revocation, continue to apply in respect of those taxes and charges imposed in respect of the income year ending on the 31st day of March 1981 and earlier years, as if that order had not been revoked.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF SWEDEN 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 Sweden, 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 1

Taxes covered

- (1) The existing taxes which are the subject of this Convention are:
- (a) in Sweden:
the State income tax (including the sailor's tax and the coupon tax), the tax on the undistributed profits of companies, the tax on public entertainers and the communal income tax;
 - (b) in New Zealand:
the income tax and the excess retention tax.

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes by either Contracting State or which are imposed by the Government of any territory to which this Convention is extended under Article 26.

(3) For the purposes of subparagraph (b) of paragraph (1) of this Article, the income tax does not include the bonus issue tax.

ARTICLE 2

General Definitions

- (1) In this Convention unless the context otherwise requires:
- (a) the term "Sweden" means the Kingdom of Sweden, and includes any area adjacent to the territorial waters of Sweden within which, under the laws of Sweden and in accordance with international law, the rights of Sweden with respect to the exploration and exploitation of the natural resources on the seabed or in its subsoil may be exercised;
 - (b) the term "New Zealand", when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) but does not include the Cook Islands, Niue or Tokelau; it also includes areas adjacent to the territorial sea of the metropolitan territory of New Zealand (including the outlying islands) which by New Zealand legislation and in accordance with international law have been, or may hereafter be, designated as areas over which New Zealand has sovereign rights for the purposes of exploring them or of exploring, exploiting, conserving and managing the natural resources of the sea, or of the seabed and subsoil;

SCHEDULE—*continued*

- (c) the terms “Contracting State”, “a Contracting State” and “the other Contracting State” mean Sweden or New Zealand as the context requires;
 - (d) the term “competent authorities” means in the case of Sweden, the Minister of the Budget or his authorised representative and in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative; and in the case of any territory to which this Convention is extended under Article 26, the competent authority for the administration in such territory of the taxes to which this Convention applies;
 - (e) the term “Swedish tax” means tax imposed by Sweden being tax to which this Convention applies; the term “New Zealand tax” means tax imposed by New Zealand being tax to which this Convention applies;
 - (f) the term “tax” means Swedish tax or New Zealand tax as the context requires;
 - (g) the term “person” comprises an individual, a company and any other body of persons;
 - (h) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (i) 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 a Contracting State” and “enterprise of the other Contracting State” mean a Swedish enterprise or a New Zealand enterprise as the context requires;
 - (j) the term “industrial or commercial profits” means income derived by an enterprise from the conduct of a trade or business, but does not include income referred to in paragraph (7) of Article 10, income referred to in Article 11, income referred to in Article 12, dividends, interest, royalties (as defined in Article 10), rents, profits from operating ships, boats, or aircraft, or remuneration from personal (including professional) services;
 - (k) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (l) words in the singular include the plural and words in the plural include the singular.
- (2) As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning taxes to which the Convention applies.
- (3) For the purposes of this Convention the terms “Swedish 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 to which this Convention applies.
- (4) In determining for the purposes of Article 8, 9 or 10 whether dividends, interest or royalties are beneficially owned by a resident of a

SCHEDULE—*continued*

Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be deemed to be beneficially owned by that trustee.

(5) The terms “resident in Sweden” and “resident in New Zealand” mean respectively resident in Sweden for the purposes of Swedish tax and resident in New Zealand for the purposes of New Zealand tax.

ARTICLE 3

Resident

(1) For the purposes of this Convention the terms “resident of Sweden” and “resident of New Zealand” mean respectively any person who is resident in Sweden and any person who is resident in New Zealand.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall, for the purposes of this Convention, be determined in accordance with the following rules—

- (a) he shall be deemed to be solely a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be solely a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be solely a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be solely a resident of the Contracting State of which he is a citizen;
- (d) If he is a citizen of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where, by reason of paragraph (1) of this Article, a person other than an individual is a resident of both Contracting States then this case shall, for the purposes of this Convention, be determined in accordance with the following rules:

- (a) it shall be deemed to be solely a resident of New Zealand if the centre of its administrative or practical management is situated in New Zealand and solely a resident of Sweden if the centre of its administrative or practical management is situated in Sweden, whether or not any person outside New Zealand or Sweden, as the case may be, exercises or is capable of exercising any overriding control of it or of its policy or affairs in any way whatsoever; and
- (b) failing a resolution of the matter under subparagraph (a) of this paragraph, it shall be deemed to be solely a resident of New Zealand if it is established by or under the laws of New Zealand and solely a resident of Sweden if it is established by or under the laws of Sweden.

SCHEDULE—*continued*

(4) For the purposes of this Convention, the terms “resident of a Contracting State” and “resident of the other Contracting State” mean a person who is a resident of Sweden or a person who is a resident of New Zealand as the context requires.

ARTICLE 4

Permanent Establishment

(1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in which the business of an enterprise is wholly or partly carried on.

(2) A permanent establishment shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) A building site or construction, installation or assembly project which exists for more than six months.

(3) The term “permanent establishment” shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising, the supply of information or scientific research.

(4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:

- (a) it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State; or
- (b) substantial equipment or machinery is for more than six months in that other Contracting State being used or installed by, for or under contract with the enterprise.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (6) of this Article applies—shall be deemed to be a permanent establishment of that enterprise in the former Contracting State if—

SCHEDULE—*continued*

- (a) he has, and habitually exercises in that former Contracting State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise on behalf of the enterprise; or
- (b) he maintains in that former Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
- (c) in so acting, he manufactures or processes in that former Contracting State any goods for the enterprise.

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status where any such person is acting in the ordinary course of his business as a broker, a general commission agent or other agent of independent status.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

(8) Where an enterprise of a Contracting State 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—

- (a) either enterprise participates directly or indirectly in the management, control or capital of the other enterprise; or
- (b) the same persons participate directly or indirectly in the management, control or capital of both enterprises,—

then, for the purposes of this 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.

ARTICLE 5

Business Profits

(1) Industrial or commercial profits of a Swedish enterprise shall be exempt from New Zealand tax unless the enterprise is engaged in trade or business in New Zealand through a permanent establishment situated therein. If such enterprise is so engaged, tax may be imposed by New Zealand on the industrial or commercial profits of the enterprise but only on so much of them as is directly or indirectly attributable to that permanent establishment.

(2) Industrial or commercial profits of a New Zealand enterprise shall be exempt from Swedish tax unless the enterprise is engaged in trade or business in Sweden through a permanent establishment situated therein. If such enterprise is so engaged, tax may be imposed by Sweden on the industrial or commercial profits of the enterprise but only on so much of them as is directly or indirectly attributable to that permanent establishment.

SCHEDULE—*continued*

(3) Where an enterprise of a Contracting State is engaged in trade or business in the other Contracting State 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 under the same or similar conditions 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 Contracting State. If the information available to the taxation authorities 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 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 authorities 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 authorities permits, in accordance with the principle stated in this paragraph.

(4) In determining the industrial or commercial profits attributable to a permanent establishment in a Contracting State there shall be allowed as deductions expenses which are incurred for the purpose of the permanent establishment and deductible in determining the profits of a permanent establishment under the law of the Contracting State in which the permanent establishment is situated, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

(5) Industrial or commercial profits shall not be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) Nothing in this Article shall affect any provisions of the law of either Contracting State at any time in force regarding the taxation of any income from the business of any form of insurance; provided that if the law in force in either Contracting State at the date of signature of this Convention relating to the taxation of that income is varied (otherwise than in minor respects so as not to affect its general character), the Contracting States shall consult each other with a view to agreeing to such amendment of this paragraph as may be appropriate.

(7) Where—

- (a) a New Zealand enterprise performs in New Zealand manufacturing, processing or other services, in relation to any goods or materials for or on behalf of a Swedish enterprise which has, or is deemed to have, a permanent establishment in New Zealand; and
- (b) the provisions of Article 6 would be applicable to that New Zealand enterprise in respect of those services but, pursuant to an agreement or arrangement to which that Swedish enterprise and the Government or competent authorities of New Zealand are parties, those provisions are not applied, or are not applied in full, in New Zealand in relation to that New Zealand enterprise in respect of those services,

SCHEDULE—continued

nothing in Article 5 shall affect the operation of the law of New Zealand in relation to the taxation of that Swedish enterprise in respect of any industrial or commercial profits which are, under that law, derived from sources in New Zealand in relation to those goods or materials.

ARTICLE 6*Associated Enterprises*

(1) Where—

- (a) an enterprise of a Contracting State 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 a Contracting State and an enterprise of the other Contracting State, and, 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, then any profits which, but for those conditions, might have been expected to accrue 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) If the information available to the taxation authorities concerned is inadequate to determine, for the purpose of paragraph (1) of this Article, the profits which might have been expected to accrue to an enterprise, nothing in that 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 authorities 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 authorities permits, in accordance with the principle stated in that paragraph.

ARTICLE 7*Shipping and Air Transport*

(1) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 8*Dividends*

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

SCHEDULE—*continued*

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the amount of tax so charged shall not exceed 15 percent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) Dividends paid by a company which is resident in New Zealand to a company which is resident in Sweden shall be exempt from Swedish tax to the extent that would be allowed by the Swedish tax laws if both companies were resident in Sweden. This exemption shall not be granted unless the principal part of the profits or income of the company paying the dividends arises, directly or indirectly, from business activities other than the management of securities and other similar movable property and such activities are carried on within New Zealand by the company paying the dividends or by a company in which it owns at least 25 percent of the share capital.

(4) The limitation on the amount of tax for which paragraph (2) of this Article provides shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

ARTICLE 9

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the amount of tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(3) The limitation on the amount of tax for which paragraph (2) of this Article provides shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other

SCHEDULE—*continued*

Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base.

(4) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness in respect of which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(5) Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness in respect of which it is paid, exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation on the amount of tax for which paragraph (2) of this Article provides shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State.

(6) In the application of this Article by a Contracting State the term “interest” as used in this Article shall not include any interest which is treated as a dividend under the laws of that Contracting State.

ARTICLE 10

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the amount of tax so charged shall not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

(3) The term “royalties” as used in this Article means payments of any kind to the extent to which they are paid as consideration for—

(a) The use of, or the right to use, any—

(i) copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;

(ii) industrial, commercial or scientific equipment;

(iii) motion picture films; or

(iv) films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting;

(b) the supply of scientific, technical, industrial or commercial knowledge, information or assistance (including management services),—

but does not include payments within the meaning of subparagraph (b) (v) of paragraph (2) of Article 11.

SCHEDULE—*continued*

(4) The limitation on the amount of tax for which paragraph (2) of this Article provides shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the knowledge, information, assistance, right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of the royalties paid, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation on the amount of tax for which paragraph (2) of this Article provides shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State.

(7) Income derived from sources within a Contracting State from the sale of patent rights by a resident of the other Contracting State who does not have, in the first-mentioned Contracting State, a permanent establishment with which the patent rights are effectively connected, shall be exempt from tax in that first-mentioned Contracting State.

ARTICLE 11

Income from Real Property

(1) Income from real property may be taxed in the Contracting State in which such property is situated and according to the law of that State.

(2) (a) Subject to subparagraphs (b) and (c) of this paragraph and to paragraph (5) of this Article, the term “real property” as used in this Article—

- (i) in the case of property situated in Sweden, means any property which under the laws of Sweden is regarded as real property;
 - (ii) in the case of property situated in New Zealand, includes every estate or interest in real property or in land and every structure or building erected on, and every improvement to, that land;
- (b) the term “real property” as so used shall in any case include—
- (i) property accessory to real property;
 - (ii) livestock and equipment used in agricultural, pastoral or other farming activities, or in forestry;

SCHEDULE—*continued*

- (iii) rights to which the provisions of the general law respecting real property apply;
 - (iv) usufruct of real property and any other right of taking any profit or produce from real property; and
 - (v) rights to payments of any kind to the extent to which such payments are consideration for the operation of, or the right to operate, any mine, oil well, gas well, or quarry, or for the extraction, removal, or other exploitation of, or the right to extract, remove, or otherwise exploit, standing timber or any natural resource;
- (c) the term “real property” as so used shall not include ships, boats or aircraft.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply to income derived from the direct use of real property or from the letting or subletting of real property or from the bailment of livestock, or from the use in any other form of, or the grant of any right whatsoever in respect of, real property, including income from agricultural, pastoral or other farming enterprises and from forestry enterprises.

(4) The provisions of paragraphs (1) to (3) of this Article shall also apply to the income from real property of any enterprises other than agricultural, pastoral or other farming enterprises and forestry enterprises and to income from real property used for the performance of independent personal services.

(5) For the purposes of this Article and of Article 12—

- (a) the term “right” means any right, licence, permit, authority, title, option, privilege, or other concession, and includes a share or interest in any right, licence, permit, authority, title, option, privilege, or other concession; and
- (b) a right as so defined shall be treated as being situated in the Contracting State in which the real property, mine, oil well, gas well, quarry, standing timber or natural resource to which it relates is situated.

ARTICLE 12

Gains from the Alienation of Property

Income from—

- (a) the sale or other disposition of—
 - (i) real property, as defined in paragraph (2) of Article 11, situated in a Contracting State; or
 - (ii) any share or comparable interest in a company or association (including a partnership) whose assets consist wholly or principally of real property so situated; or
- (b) the sale or other disposition of—
 - (i) any right relating to the operation of any mine, oil well, gas well, or quarry so situated or to the extraction, removal, or other exploitation of standing timber or of any natural resource so situated; or
 - (ii) any share or comparable interest in a company or association (including a partnership) whose assets consist wholly or principally of any such rights,—

may be taxed in that Contracting State and according to the law of that State.

SCHEDULE—*continued*

ARTICLE 13

Government Service

(1) Remuneration (other than pensions) paid by a Contracting State to any individual in respect of services rendered to that Contracting State in the discharge of governmental functions shall be subjected to tax only in that Contracting State.

(2) However the remuneration may also be taxed in the other Contracting State if—

(a) the individual renders those services in that other Contracting State and

(b) he is

(i) resident in that other Contracting State (not being resident therein solely for the purpose of rendering those services) or

(ii) a citizen of that other Contracting State.

(3) Where the remuneration is not exempt under paragraph (1) of this Article it shall, for the purposes of Article 23, be treated as income from sources within the Contracting State paying the remuneration.

(4) This Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either Contracting State for the purpose of profit.

ARTICLE 14

Pensions and Annuities

(1) Subject to paragraph (3) of this Article, pensions and annuities paid to a resident of a Contracting State shall be subjected to tax only in that 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 return for adequate and full consideration in money or money’s worth.

(3) Pensions paid by a Contracting State to any individual in respect of services rendered to that Contracting State and pensions paid under the social security scheme of a Contracting State may be taxed in that Contracting State.

ARTICLE 15

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be subjected to tax only in that Contracting State unless such services or activities are performed in the other Contracting State. Income in respect of such services or activities performed in the other Contracting State may be taxed in that other Contracting State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character performed in the other Contracting State shall not be subjected to tax in that other Contracting State if—

SCHEDULE—*continued*

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the income year of that other Contracting State, and
 - (b) the recipient does not maintain a fixed base in that other Contracting State for a period or periods exceeding in the aggregate 183 days in such year.
- (3) The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

Dependent Personal Services

(1) Subject to Articles 13, 14, 17 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be subjected to tax only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised such remuneration as is derived therefrom may be taxed in that other Contracting State.

(2) Notwithstanding paragraph (1) of this Article remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be subjected to tax only in the former Contracting State, if:

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the income year of that other Contracting State, and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of that other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the operator is a resident.

ARTICLE 17

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 18

Public Entertainers and Athletes

(1) Notwithstanding anything contained in this Convention, income derived by public entertainers such as theatre, motion picture, radio or television artistes and musicians and by athletes from their personal activities as such, may be taxed in the Contracting State in which those activities are exercised.

SCHEDULE—*continued*

(2) Where the services mentioned in paragraph (1) of this Article are provided in a Contracting State by an enterprise of the other Contracting State, then the profits derived from providing those services by such an enterprise may, notwithstanding anything contained in this Convention, be taxed in the first-mentioned Contracting State.

ARTICLE 19

Professors and Teachers

Notwithstanding Articles 15 and 16 a professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who immediately before that visit is a resident of the other Contracting State shall be exempt from tax in the former Contracting State on any remuneration for such teaching in respect of which he is subject to tax in that other Contracting State.

ARTICLE 20

Students

A student or a business or trade apprentice who, immediately before visiting a Contracting State, is a resident of the other Contracting State and is present in the former Contracting State solely for the purpose of his education or training shall not be taxed in that former Contracting State on payments which he receives for the purpose of his maintenance, education, or training if such payments are made to him from sources outside that former Contracting State.

ARTICLE 21

Dual Residents Receiving Income

(1) This Article shall apply to a person who is resident in Sweden and is also resident in New Zealand.

(2) Where such a person is treated for the purposes of this Convention solely as a resident of a Contracting State he shall be exempt in the other Contracting State from tax on income other than income which, under the law of that other Contracting State or under this Convention, is derived, or is deemed to be derived, from sources in that other Contracting State.

ARTICLE 22

Swedish Undivided Estates

(1) 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.

(2) Swedish tax on the undivided estate of a deceased person shall in so far as the income accrues to a beneficiary who is a resident of New Zealand, be allowed as a credit against New Zealand tax payable in respect of that income, in accordance with Article 23.

The provisions of this Article shall not be construed as limiting the operation of paragraph (4) of Article 2.

SCHEDULE—*continued*

ARTICLE 23

Credits

(1) Subject to the provisions of the law of New Zealand from time to time in force relating to the allowance as a credit against New Zealand tax of tax payable in any country other than New Zealand (which shall not affect the general principle hereof), Swedish tax computed by reference to income derived from sources within Sweden by a resident of New Zealand and payable under the law of Sweden and consistently with this Convention, whether directly or by deduction, (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid), shall, subject to the provisions of paragraph (1) of Article 13, be allowed as a credit against the New Zealand tax computed by reference to the same income and payable in respect of that income.

(2) New Zealand tax computed by reference to income derived from sources within New Zealand by a resident of Sweden and payable under the law of New Zealand and consistently with this Convention, whether directly or by deduction, (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid), shall, subject to the provisions of paragraph (3) of Article 8 and paragraph (1) of Article 13, be allowed as a credit against Swedish tax computed by reference to the same income and payable in respect of that income. The credit, however, shall not exceed the amount of Swedish tax (as computed before the credit is given) payable in respect of that income.

(3) For the purposes of this Article:

- (a) (i) New Zealand tax borne by a resident of Sweden in respect of dividends paid by a company which is resident in New Zealand shall be treated as tax in respect of income from sources within New Zealand;
- (ii) Swedish tax borne by a resident of New Zealand in respect of dividends paid by a company which is resident in Sweden shall be treated as tax in respect of income from sources within Sweden;
- (b) interest and royalties (as defined in Article 10) which are, in accordance with paragraph (4) of Article 9 and paragraph (5) of Article 10 respectively, deemed to arise in a Contracting State shall be treated as having a source within that Contracting State;
- (c) any amount which is included in a person's taxable income under any provision of the law of either Contracting State for the time being in force regarding taxation of income from any form of insurance shall be treated as having a source within that Contracting State;
- (d) profits derived by a resident of a Contracting State from the operation of ships or aircraft, being profits from operations confined solely to places in the other Contracting State, shall be treated as having a source within that other Contracting State;
- (e) subject to paragraph (3) of Article 13 remuneration for personal (including professional) services performed in a Contracting State shall be treated as income from sources within that Contracting State;

SCHEDULE—*continued*

- (f) the services of an individual which are wholly or mainly performed in ships or aircraft operated in international traffic by a resident of a Contracting State shall be deemed to be performed in that Contracting State;
- (g) income which is derived by a resident of a Contracting State and which, under Article 11 or Article 12, may be taxed in the other Contracting State shall be treated as having a source within that other Contracting State.
- (4) Where profits on which an enterprise of a Contracting State has been charged to tax in that Contracting State are also included in the profits of an enterprise of the other Contracting State and the profits so included are profits which might have been expected to accrue to that enterprise of the other Contracting State if the conditions operative between the two enterprises in their commercial or financial relations had been those which might have been expected to operate between independent enterprises dealing at arm's length, the amount of such profits included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source within the other Contracting State of the enterprise of the former Contracting State and credit shall be given accordingly in respect of the extra tax chargeable in the other Contracting State as a result of the inclusion of the said amount. For the purposes of this Article the competent authorities shall if necessary consult each other.
- (5) 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.
- (6) 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 24

Exchange of Information

- (1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and reviewing authorities) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
- (2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on a Contracting State the obligation:
- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

SCHEDULE—*continued*

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 25

Mutual Agreement Procedure

(1) Where a taxpayer considers that the action of the taxation authorities of the Contracting States has resulted or will result in taxation contrary to the provisions of this Convention, he shall be entitled to present his case to the competent authorities of the Contracting State of which he is a resident. Should the taxpayer's claim be deemed worthy of consideration, those competent authorities shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to a satisfactory solution.

(2) The competent authorities may communicate directly with each other to give effect to the provisions of this Convention and to ensure its consistent interpretation and application. In particular, the competent authorities may consult each other to endeavour to resolve disputes arising out of the application of paragraph (3) of Article 5 or Article 6, or the determination of the source of any particular item of income.

ARTICLE 26

Territorial Extension

(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 between the Contracting States in Notes to be exchanged for this purpose.

(2) The termination in respect of Sweden or New Zealand of this Convention under Article 28 shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Convention to any territory to which it has been extended under this Article.

ARTICLE 27

Entry into Force

(1) This Convention shall be subject to ratification by the Contracting States and the instruments of ratification shall be exchanged at Wellington as soon as possible.

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

SCHEDULE—*continued*

- (a) in Sweden:
in respect of income derived on or after 1 January in the calendar year next following that in which the instruments of ratification are exchanged;
- (b) in New Zealand:
in respect of income derived during any income year commencing on or after 1 April in the calendar year next following that in which the instruments of ratification are exchanged.
- (3) The Convention between the Government of New Zealand and the Government of Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Wellington on 16 April 1956, shall terminate, and shall cease to have effect:
- (a) in Sweden:
in respect of income derived on or after 1 January in the calendar year next following that in which the instruments of ratification in respect of this Convention are exchanged;
- (b) in New Zealand:
in respect of income derived during any income year commencing on or after 1 April in the calendar year next following that in which the instruments of ratification in respect of this Convention are exchanged.

ARTICLE 28

Termination

This Convention shall continue in force indefinitely but either Contracting State may, on or before 30 June in any calendar year after the year 1981, give notice of termination, through diplomatic channels, to the other Contracting State and, in such event, this Convention shall cease to be effective:

- (a) in Sweden:
in respect of income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;
- (b) in New Zealand:
in respect of income derived during any income year commencing on or after 1 April in the calendar year next following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorized thereto, have signed this Convention.

Done at Stockholm in duplicate, in the English and Swedish languages, both texts being equally authentic, this 21st day of February 1979.

For the Government
of
New Zealand
W. GRAY THORP

For the Government
of
Sweden
HANS BLIX

A. C. McLEOD,
Acting for Clerk of the Executive Council.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 23 October 1980.

This order is administered in the Inland Revenue Department.