

Serial Number 1952/72



THE DOUBLE TAXATION RELIEF (UNITED STATES OF AMERICA) ORDER 1952

FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 9th day of
April 1952

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

ORDER

1. (1) This order may be cited as the Double Taxation Relief (United States of America) Order 1952.

(2) This order shall apply with respect to income tax and social security charge for the year of assessment commencing on the 1st day of April 1952, and for every subsequent year.

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 United States of America with a view to affording relief from double taxation in relation to income tax and social security charge and taxes of a similar character imposed by the laws of the United States of America, shall, notwithstanding anything to the contrary in the Land and Income Tax Act 1923 or the Social Security Act 1938, or any other enactment, have effect in relation to income tax and social security charge.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA 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 United States of America,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have appointed for that purpose as their Plenipotentiaries:

The Government of New Zealand:

The Right Honorable Walter Nash, P.C., Minister of Finance and Minister of Customs for New Zealand, and

The Government of the United States of America:

Mr George C. Marshall, Secretary of State of the United States of America,

Who, having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

ARTICLE I

(1) The taxes which are the subject of the present Convention are—

(a) In New Zealand:

The income-tax and social security charge (hereinafter referred to as New Zealand tax).

(b) In the United States of America:

The Federal income taxes, including surtaxes (hereinafter referred to as United States tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Convention or by the Government of any territory to which the present Convention is extended under Article XX.

ARTICLE II

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

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) For the purposes of this Convention New Zealand includes all islands and territories within the limits thereof for the time being, including the Cook Islands.

(c) The terms "territory of one of the Contracting Governments" and "territory of the other Contracting Government" mean the United States or New Zealand, as the context requires.

(d) The term "tax" means United States tax or New Zealand tax, as the context requires.

(e) The term "person" includes any body of persons, corporate or not corporate.

(f) The term "company" means any body corporate.

(g) The term "United States corporation" means a corporation, association or other like entity created or organized in, or under the laws of, the United States.

(h) The term "New Zealand corporation" means any kind of juridical person created under the laws of New Zealand.

(i) The terms "corporation of one Contracting Government" and "corporation of the other Contracting Government" mean a United States corporation or a New Zealand corporation, as the context requires.

(j) The term "resident of New Zealand" means any person (other than a citizen of the United States or a United States corporation) who is resident in New Zealand for the purposes of New Zealand tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in New Zealand if it is incorporated under the laws of, or if its business is managed and controlled in, New Zealand.

SCHEDULE—*continued*

- (k) The term "resident of the United States" means any individual who is resident in the United States for the purposes of United States tax and not resident in New Zealand for the purposes of New Zealand tax, and any United States corporation and any partnership created or organized in, or under the laws of, the United States, being a corporation or partnership which is not resident in New Zealand for the purposes of New Zealand tax.
- (l) The terms "resident of the territory of one of the Contracting Governments" and "resident of the territory of the other Contracting Government" mean a resident of the United States or a resident of New Zealand, as the context requires.
- (m) The terms "United States enterprise" and "New Zealand enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of the United States and an industrial or commercial enterprise or undertaking carried on by a resident of New Zealand; and the terms "enterprise of one of the Contracting Governments" and "enterprise of the other Contracting Government" mean a United States enterprise or a New Zealand enterprise, as the context requires.
- (n) The term "industrial or commercial profits" includes manufacturing, mercantile, mining, financial and farming profits, but does not include income in the form of dividends, interest, rents or royalties, insurance premiums, management charges, or remuneration for personal services.
- (o) The term "permanent establishment," when used with respect to an enterprise of one of the Contracting Governments means a branch, management, factory, mine, farm, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or regularly fills orders on its behalf from a stock of goods or merchandise.

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

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

The fact that a corporation of one Contracting Government has a subsidiary corporation which is a corporation of the other Contracting Government or which is engaged in trade or business in the territory of such other Contracting Government (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation. The maintenance within the territory of one of the Contracting Governments by an enterprise of the other Contracting Government of a warehouse for convenience of delivery and not for purposes of display shall not of itself constitute a permanent establishment within that territory even though offers of purchase have been obtained by an agent of the enterprise in that territory and transmitted by him to the enterprise for acceptance.

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

ARTICLE III

- (1) The industrial or commercial profits of a United States enterprise shall not be subject to New Zealand tax unless the enterprise is engaged in trade or business in New Zealand through a permanent establishment situated therein. If it is so engaged, New Zealand tax may be imposed on the entire income of such enterprise from sources within New Zealand. Nothing in this paragraph shall affect any provisions of the law of New Zealand regarding the taxation of income from the business of insurance.

SCHEDULE—*continued*

(2) The industrial or commercial profits of a New Zealand enterprise shall not be subject to United States tax unless the enterprise is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, United States tax may be imposed on the entire income of such enterprise from sources within the United States.

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

(4) In determining the industrial or commercial profits from sources within the territory of one of the Contracting Governments of an enterprise of the other Contracting Government no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former Contracting Government by such enterprise.

(5) In the determination of the industrial or commercial profits of the permanent establishment there shall be allowed as deductions all expenses of a type allowed as a deduction by the Contracting Government in whose territory the permanent establishment is situated and which are reasonably applicable to the permanent establishment including executive and general administrative expenses so applicable.

(6) If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this paragraph shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this paragraph.

ARTICLE IV

(1) Where

- (a) An enterprise of one of the Contracting Governments participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Government, or
- (b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting Governments and an enterprise of the other Contracting Government, and
- (c) In either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of these conditions have not so accrued may be included in the profit of that enterprise and taxed accordingly.

(2) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this paragraph.

(3) For the purpose of this Article an industrial or commercial enterprise or undertaking carried on by a United States citizen resident in New Zealand or by a United States corporation managed and controlled in New Zealand shall be deemed to be a New Zealand enterprise.

SCHEDULE—*continued*

ARTICLE V

(1) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which an individual resident of New Zealand or a New Zealand corporation derives from operating ships or aircraft shall be exempt from United States tax.

(2) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which a citizen of the United States not resident in New Zealand or a United States corporation not resident in New Zealand derives from operating ships or aircraft shall be exempt from New Zealand tax.

ARTICLE VI

(1) The rate of United States tax on dividends derived from sources within the United States by a resident of New Zealand not engaged in trade or business within the United States through a permanent establishment therein shall not exceed 15 per cent. : Provided that such rate of tax shall not exceed 5 per cent. if such resident is a corporation controlling, directly or indirectly, at least 95 per cent. of the entire voting power in the corporation paying the dividend, and not more than 25 per cent. of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to 5 per cent. shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) In the event that New Zealand should impose at any time tax on dividends derived from sources within New Zealand by a non-resident thereof, including a resident of the United States, not engaged in trade or business within New Zealand through a permanent establishment therein at a rate in excess of 15 per cent. (or 5 per cent. in cases corresponding to those within the scope of the proviso in paragraph (1) of this Article), either of the Contracting Governments may terminate this Article provided that notice of termination is given in writing, and, in such event, this Article shall cease to be effective as respects United States tax for the taxable years beginning on or after the first day of January next following the date on which such notice is given.

ARTICLE VII

(1) A resident of the territory of one of the Contracting Governments deriving from sources within the territory of the other Contracting Government—

- (a) Royalties in respect of the operation of mines, quarries or natural resources, or
 - (b) Rentals from real property, or
 - (c) Royalties or other amounts paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark or other like property,
- may elect for any taxable year to be subject to the tax of such other Contracting Government, on a net basis, as if such resident were engaged in trade or business within the territory of such other Contracting Government through a permanent establishment therein during such taxable year.

(2) The provisions of this Article shall not apply to income falling within the scope of Article VIII of the present Convention.

ARTICLE VIII

(1) Rentals in respect of motion picture films derived from sources within the territory of one of the Contracting Governments by a resident of the territory of the other Contracting Government who is not engaged in trade or business through a permanent establishment in the former territory shall be exempt from tax by the former Government.

(2) The provisions of this Article shall not be construed to affect the New Zealand film hire tax or the income-tax imposed by New Zealand on income which is taxable under New Zealand law and which is derived by any person from the business of renting motion picture films.

SCHEDULE—*continued*

ARTICLE IX

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

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

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

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

(3) For the purposes of this Article a corporation of one Contracting Government shall not be deemed to be a resident of the territory of the other Contracting Government even though it has a permanent establishment in that territory.

[Paragraph (4) not included in ratification.]

ARTICLE X

(1) Remuneration, wages or salary (other than pensions) paid by the Government of the United States for services rendered to the United States in the discharge of governmental functions to an individual who is a citizen of the United States or who is ordinarily resident in New Zealand solely for the purpose of rendering such services shall be exempt from New Zealand tax.

(2) Remuneration, salary and wages (other than pensions) paid by the Government of New Zealand to an individual (other than a citizen of the United States) for services rendered to New Zealand in the discharge of governmental functions shall be exempt from United States tax.

(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 either of the Contracting Governments for purposes of profit.

ARTICLE XI

Income (other than dividends paid by a company resident in New Zealand) of a person who is a resident of the United States which is exempt from New Zealand tax under any provision of the present convention shall not be included in that person's total income for the purpose 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 XII

(1) Dividends paid by a New Zealand corporation shall be exempt from United States tax except where the recipient is a citizen of, or resident in, the United States or a United States corporation.

(2) Dividends paid by a United States corporation shall be exempt from New Zealand tax except where the recipient is resident in New Zealand.

ARTICLE XIII

(1) Subject to section 131 of the United States Internal Revenue Code as in effect on the date of signature of this Convention, New Zealand tax shall be allowed as a credit against United States tax.

(2) If, under the law in force in New Zealand at any time while the present Convention is in effect, New Zealand tax is payable in respect of income from sources within the United States in respect of which United States tax is payable, the United States tax payable (whether directly or by deduction) in respect of any such income shall, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in New Zealand, be allowed as a credit

SCHEDULE—*continued*

against any New Zealand tax payable in respect of that income. For the purposes of this paragraph the terms "United States tax" and "New Zealand tax" do not include any penalty imposed under the laws of the United States or New Zealand relating to the taxes which are the subject of the present Convention and the term "New Zealand tax" does not include social security charge.

(3) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in the territory of one of the Contracting Governments shall be deemed to be income from sources within that territory.

ARTICLE XIV

A professor or teacher who is normally a resident of the territory of one of the Contracting Governments and who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the territory of the other Contracting Government, shall be exempt from tax by such other Government in respect of such remuneration.

ARTICLE XV

A student or business or trade apprentice who is normally resident in the territory of one of the Contracting Governments and who is receiving full-time education or training in the territory of the other Contracting Government shall be exempt from tax by such other Government on payments made to him by persons in the territory of the former Government for the purpose of his maintenance, education or training.

ARTICLE XVI

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

(2) The term "taxation authorities" means, in the case of New Zealand, the Commissioner of Taxes or his authorized representative; in the case of the United States, the Commissioner of Internal Revenue or his authorized representative.

ARTICLE XVII

Each of the Contracting Governments may collect such tax imposed by the other Contracting Government as will ensure that the exemption or reduced rate of tax granted under the present Convention by such other Government shall not be enjoyed by persons not entitled to such benefits.

ARTICLE XVIII

(1) Where a person shows proof that the action of the revenue authorities of the Contracting Governments has resulted or may result in double taxation in his case (including for this purpose adjustments as between taxpayers affected by Article IV) in respect of any of the taxes to which the present Convention relates, he shall be entitled to lodge a claim with the Government of which he is a citizen or in whose territory he is resident. If the claim should be deemed worthy of consideration, the taxation authorities of such Government may consult with the taxation authorities of the other Government to determine whether the double taxation in question may be avoided.

(2) The taxation authorities of the two Contracting Governments may prescribe regulations to carry into effect the present Convention within the respective States and rules with respect to the exchange of information.

(3) The taxation authorities of the two Contracting Governments may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

SCHEDULE—*continued*

ARTICLE XIX

The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the Contracting Governments in the determination of the tax imposed by such Government.

ARTICLE XX

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

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments may, by written notice of termination given to the other Contracting Government, terminate the application of the present Convention to any territory to which it has been extended under paragraph (1), and in that event the present Convention shall cease to apply, as from the date or dates specified in the notice, which shall not be less than sixty days after the date on which such notice is given, or, if no date is specified, at the expiration of six months after the date of the notice, to the territory or territories named therein, but without affecting its continued application to New Zealand, the United States or to any other territory to which it has been extended under paragraph (1) hereof.

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

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

ARTICLE XXI

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

(2) Upon exchange of instruments of ratification, the present Convention shall have effect—

- (a) As respects United States tax, for the taxable years beginning on or after the first day of January in the calendar year in which occurs the exchange of the instruments of ratification,*
- (b) As respects New Zealand tax, for the year of assessment beginning on the first day of April next following the calendar year in which occurs the exchange of the instruments of ratification.*

ARTICLE XXII

The present Convention shall continue effective for a period of two years and indefinitely after that period, but may be terminated by either Contracting Government at the end of such period or at any time thereafter, provided that at least six months' prior notice of termination has been given in writing and, in such event, the present Convention shall cease to be effective—

- (a) As respects United States tax, for the taxable years beginning on or after the first day of January next following the expiration of the six-month period,

* Instruments of ratification exchanged at Washington, 18 December 1951.

SCHEDULE—continued

(b) As respects New Zealand tax, for the years of assessment beginning on or after the first day of April in the second year following the expiration of the six-month period.

Done at Washington, in duplicate, this 16th day of March, 1948.

For the Government of New Zealand :

(Signed) W. NASH,

Minister of Finance and
Minister of Customs for New Zealand.

For the Government of the United States of America :

(Signed) G. C. MARSHALL,

Secretary of State
of the United States of America.

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

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette* : 10th day of April 1952.

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