



**THE INCOME TAX (NON-RESIDENT COMPANIES SPECIAL
DEVELOPMENT PROJECT) ORDER 1990**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 27th day of August 1990

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 42 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 application—(1) This order may be cited as the Income Tax (Non-Resident Companies Special Development Project) Order 1990.

(2) This order shall apply with respect to income tax payable on taxable income derived by the company referred to in this order on and after the 1st day of October 1989.

2. Interpretation—(1) In this order—

“The industry agreement” means the agreement a copy of which is set out in the Schedule to the Income Tax (Non-Resident Companies Special Development Project) Order 1970:

“The smelter” means the initial aluminium smelter on Tiwai Peninsula near Bluff in New Zealand and expansions thereof from time to time:

“Taxable income” does not include income in the form of dividends, interest, rents, royalties, payments of any kind for the supply of scientific, technical, industrial, or commercial knowledge, information, or assistance, or any payments of a similar nature:

“Ton” means a ton of 2,240 pounds avoirdupois, and a specified number of tons mentioned in connection with the production capacity of the smelter means that number of tons of aluminium in cast form:

The expressions “aluminium”, “force majeure”, “participant”, “participants”, “the period of force majeure”, “the prescribed capacity”, “rated production capacity”, and “the smelter company” have the same meanings as in the industry agreement:

The expressions “accounting year” and “branch” have the same meanings as in section 42 of the Income Tax Act 1976:

Other expressions defined in the Income Tax Act 1976 have the meanings so defined.

(2) The Acts Interpretation Act 1924 shall apply to this order as if this order were an Act of the General Assembly.

3. Special development project declared—The industrial undertaking, as specified in paragraph (ii) of subclause (c) of clause 10 of the industry agreement, being an undertaking which before the 1st day of October 1989 was carried on by Sumitomo Aluminium Sales Company Limited, and on and after that date has been carried on by Sumitomo Chemical Company Limited (a duly incorporated company having its registered office at 5-33, Kitahama 4-chome, Chuo-ku, Osaka, Japan, and hereafter in this order referred to as the company) through a branch, situated in New Zealand, of the company, is hereby declared to be a special development project for the purposes of section 42 of the Income Tax Act 1976 with respect to the taxable income derived on and after the 1st day of October 1989 by the company from that industrial undertaking during such accounting years of the company as are hereunder specified as comprising, in relation to this order, the second specified period as defined in subsection (1) of the said section 42, namely, the accounting years of the company commencing on or after the 1st day of January 1989 and ending on or before the 31st day of December 1996:

Provided that the requirement in the preceding provisions of this clause that that industrial undertaking is to be carried on through a branch, situated in New Zealand, of the company shall not extend to any activities comprised in that industrial undertaking, being activities which are carried on outside New Zealand and which relate directly to the purchase of alumina, or to the supply of alumina (not being supply activities relating to the ordering and importing into New Zealand of alumina in accordance with the requirements of the smelter for the time being, or to the delivery in New Zealand of those imports to the smelter), or to the marketing outside New Zealand or the disposal outside New Zealand of aluminium.

4. Terms and conditions—This order shall be subject to the following terms and conditions:

- (a) That if the smelter had not been expanded to the prescribed capacity prior to the commencement of the second specified period, this order shall not apply with respect to the taxable income derived by the company from its said industrial undertaking on or after

the commencement of the second specified period:

Provided that if the failure to so expand the smelter was due to any force majeure, the foregoing provisions of this paragraph shall not operate so as to preclude this order from applying to—

(i) The taxable income derived by the company from that industrial undertaking during so much of the period of force majeure as falls within the second specified period; or

(ii) Where the period of force majeure terminates before the end of the second specified period and the smelter has been expanded to the prescribed capacity by the end of the period of force majeure, the taxable income derived by the company from that industrial undertaking during so much of the second specified period as remains after the end of the period of force majeure; or

(iii) Where the period of force majeure terminates before the end of the second specified period and after the commencement but before the end of an accounting year of the company within the second specified period and subparagraph (ii) of this paragraph does not apply, the taxable income derived by the company from that industrial undertaking during so much of that accounting year as remains after the end of the period of force majeure:

Provided also that nothing in this paragraph shall be construed as applying this order to any taxable income to which this order does not apply by virtue of the operation of paragraph (b) or paragraph (c) of this clause:

(b) That if at any time during the second specified period—

(i) The company fails to comply with any of the provisions of clause 8 of the industry agreement (whether through the exercise of its rights under clause 11 of that agreement or otherwise), or fails to abide by the provisions of paragraph (b) of clause 9 of that agreement; or

(ii) The company fails to abide by the provisions of paragraph (c) of clause 9 of the industry agreement so long as the Commissioner and the taxation authority of Japan have agreed in terms of that paragraph,—

this order shall not apply to the taxable income derived by the company from its said industrial undertaking on or after the commencement of its accounting year in which that failure took place:

Provided that the Governor-General may, if the Governor-General thinks fit, upon application made in that behalf by the company to the Governor-General through the Minister of Finance, declare, upon such terms and conditions as the Governor-General may impose, that this order shall apply to the taxable income derived by the company from that industrial undertaking from such date as the Governor-General determines; but no such decision of the Governor-General shall have effect to extend the second specified period beyond the date on which it would have determined had there been no such failure by the company:

Provided also that nothing in this paragraph shall be construed as applying this order to any taxable income to which it does not

apply by virtue of the operation of paragraph (a) or paragraph (c) of this clause:

(c) That if—

(i) In respect of any 2 consecutive calendar years occurring within the period of 3 calendar years commencing on the 1st day of January 1988 and ending on the 31st day of December 1990, Sumitomo Aluminium Sales Company Limited and the company fail or have failed, between them; or

(ii) The company fails in each of any 2 consecutive calendar years within the second specified period,—
to take from the smelter at least 80 percent of that quantity of aluminium which is equal to the company's committed proportion for that year (in terms of paragraph (i) of subclause (a) of clause 7 of the industry agreement) of the quantity of aluminium which is the rated production capacity of the smelter for that year, this order shall not apply to the taxable income derived by the company from its said industrial undertaking—

(iii) On or after the commencement of its accounting year next commencing after the end of the said 2 consecutive calendar years; or

(iv) After the end of the second specified period—
whichever is the sooner:

Provided that if in any calendar year the smelter fails to produce a quantity of aluminium at least equal to its rated production capacity for that year because of circumstances beyond the control of the participants (other than refusal by any country or territory other than New Zealand to permit imports of aluminium), then, for the purposes of the forgoing provisions of this paragraph, the rated production capacity of the smelter for that year shall be deemed to be the quantity of aluminium which the smelter is able to produce in that year:

Provided also that if, pursuant to an arrangement between one of the participants and another or others of the participants, the other participant or participants take all or part of the first-mentioned participant's said committed proportion for any calendar year, then, for the purposes of the foregoing provisions of this paragraph, the first-mentioned participant shall be deemed to have taken, and the other participant or participants shall be deemed not to have taken, in that year the quantity in question:

Provided further that nothing in this paragraph shall be construed as applying this order to any taxable income to which it does not apply by virtue of the operation of paragraph (a) or paragraph (b) of this clause.

5. Revocation—The Income Tax (Non-Resident Companies Special Development Project) Order 1987 (S.R. 1987/231) is hereby revoked.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order transfers the right to concessional income tax treatment under section 42 of the Income Tax Act 1976, previously afforded to Sumitomo Aluminium Sales Company Limited, to its successor Sumitomo Chemical Company Limited in respect of the period commencing on 1 January 1989 and ending with 31 December 1996. The order will apply to taxable income derived by Sumitomo Chemical Company on and after 1 October 1989.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 August 1990.
This order is administered in the Inland Revenue Department.