

1970/140

THE INCOME TAX (NON-RESIDENT COMPANIES SPECIAL DEVELOPMENT PROJECT) ORDER (NO. 2) 1970

RICHARD WILD, Administrator of the Government

ORDER IN COUNCIL

At the Government House at Wellington this 6th day of July 1970

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL

PURSUANT to the Land and Income Tax Act 1954, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. Title—This order may be cited as the Income Tax (Non-Resident Companies Special Development Project) Order (No. 2) 1970.

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 78F of the Land and Income Tax Act 1954:

Other expressions defined in the Land and Income Tax Act 1954 have the meanings so defined.

(2) The Acts Interpretation Act 1924 shall apply with respect 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 is to be carried on by Showa Denko K.K. (a duly incorporated company having its registered office at 34 Shiba Miyamoto-Cho, Minato-Ku, Tokyo, Japan, and hereinafter 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 78F of the Land and Income Tax Act 1954 with respect to the taxable income derived 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 first specified period and the second specified period as defined in subsection (1) of the said section 78F, namely—

(a) The first specified period shall comprise the accounting year of the company in which that industrial undertaking commences; and

(i) The 14 accounting years of the company next succeeding its accounting year in which that industrial undertaking commences if the date during that last-mentioned year on which that industrial undertaking commences is not later than 6 months after the commencement of that last-mentioned year; or

(ii) The 15 accounting years of the company next succeeding its accounting year in which that industrial undertaking commences if the date during that last-mentioned year on which that industrial undertaking commences is later than 6 months after the commencement of that last-mentioned year:

(b) The second specified period shall comprise the 10 accounting years of the company next succeeding its last accounting year comprised in the first specified period in relation to this order:

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 has not been expanded to the prescribed capacity by the end of the first 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 with respect 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 with respect to any taxable income with respect 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 first specified period or 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 with respect to the taxable income derived by the company from its said industrial undertaking on or after the commencement of its accounting year in respect of which that failure took place:

Provided that the Governor-General may, if he thinks fit, upon application made in that behalf by the company to him through the Minister of Finance, declare, upon such terms and conditions as the Governor-General may impose, that this order shall apply with respect 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 first specified period or 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 with respect to any taxable income with respect to which it does not apply by virtue of the operation of paragraph (a) or paragraph (c) of this clause:

- (c) That if the company fails in each of any two consecutive calendar years, within the first specified period or within the second specified period or partly within the one and partly within the other, 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 with respect to the taxable income derived by the company from its said industrial undertaking—

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

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

P. J. BROOKS,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 9 July 1970.
This order is administered in the Inland Revenue Department.