

SIXTH SCHEDULE

(Section 87)

Income Tax (Double Taxation Relief) (New Zealand) Order

1. **Short title.**

This Order may be cited as the Income Tax (Double Taxation Relief) (New Zealand) Order.

2. **Declaration.**

It is hereby declared

- (a) that the arrangements specified in the Arrangement set out in the Schedule to this Order have been made with the Government of New Zealand with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of New Zealand; and
- (b) that it is expedient that those arrangements shall have effect.

SCHEDULE TO THE ORDER

(Section 2)

Arrangement between the Government of New Zealand and the Government of Saint Christopher and Nevis for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income.

1. (1) The Taxes which are the subject of this Arrangement are:

- (a) in New Zealand, the Income Tax and the social security charge (hereinafter referred to as “New Zealand tax”);
- (b) in Saint Christopher and Nevis, the Income Tax (hereinafter referred to as Saint Christopher and Nevis tax”).

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in New Zealand or Saint Christopher and Nevis after this Arrangement has come into force.

2. (1) In this Arrangement, unless the context otherwise requires,

- (a) the term “New Zealand” includes all islands and territories within the limits thereof for the time being, including the Cook Islands;
- (b) the terms “ one of the territories” and “the other territory” means New Zealand or Saint Christopher and Nevis, as the context requires;
- (c) the term “tax” means New Zealand tax or Saint Christopher and Nevis tax, as the context requires;
- (d) the term “person” includes any body of persons, corporate or not corporate;
- (e) the term “company” includes any body corporate;
- (f) the terms “resident of New Zealand” and “resident of Saint Christopher and Nevis” mean, respectively, any person who is resident in New Zealand for the purposes of New Zealand tax and not resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax and any person who is resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax and not resident in New Zealand for the purposes of New Zealand tax; and a company shall be regarded as resident in New Zealand if its business is managed and controlled in New Zealand and as resident in Saint Christopher and Nevis if its business is managed and controlled in Saint Christopher and Nevis;

- (g) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of New Zealand or a person who is a resident of Saint Christopher and Nevis, as the context requires;
- (h) the terms “New Zealand enterprise” and “Saint Christopher and Nevis enterprise” mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of New Zealand and an industrial or commercial enterprise or undertaking carried on by a resident of Saint Christopher and Nevis; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a New Zealand enterprise or a Saint Christopher and Nevis enterprise, as the context requires;
- (i) the term “industrial or commercial enterprise or undertaking” includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities, or in the business of banking, insurance, life insurance or dealing in investments, and the term “industrial or commercial profits” includes profits from such activities or business, but does not include income in the form of dividends, interest, rents, royalties, management charges, or remuneration for personal services;
- (j) the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management, factory, mine, farm, or other fixed place of business, but does not include an agency in the other territory 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 in that other territory.

(2) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his or her business as such and receiving remuneration, in respect of those dealings at a rate not less than that customary in the class of business in question.

(3) The fact that an enterprise of one of the territories maintains in the other territory 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.

(4) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(5) The terms “New Zealand tax” and “Saint Christopher and Nevis tax” as used in the present Arrangement, do not include any tax payable in New Zealand or Saint Christopher and Nevis which represents a penalty under the law of New Zealand or Saint Christopher and Nevis relating to the taxes which are the subject of the present Arrangement.

(6) In the application of the provisions of this Arrangement by New Zealand or Saint Christopher and Nevis, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of New Zealand or, as the case may be, Saint Christopher and Nevis, relating to the taxes which are the subject of this Arrangement.

3. (1) The industrial or commercial profits of a New Zealand enterprise shall not be subject to Saint Christopher and Nevis tax unless the enterprise is engaged in trade or business in Saint Christopher and Nevis through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Saint Christopher and Nevis, but only on so much of them as is attributable to that permanent establishment:

Provided that nothing in this paragraph shall affect any provisions of the law of New Zealand regarding the taxation of income from the business of insurance.

(2) The industrial or commercial profits of a Saint Christopher and Nevis 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, tax may be imposed on those profits by New Zealand, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory 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 in that other territory if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income derived from sources in that other territory.

(4) If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in sub-paragraph 3 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 sub-paragraph (3) and this sub-paragraph.

(5) Profits derived by an enterprise of one of the territories from sale, under contracts concluded in that territory, of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent of the enterprise in that other territory, and transmitted by him or her to the enterprise for acceptance.

(6) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

4. (1) Where

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory; and
- (c) 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 be operative between independent enterprises dealing at arm's length with one another;

then, if by reason of those conditions profits which might be expected to accrue to one of the enterprises do not accrue to that enterprise, there may be included in the profits of that enterprise the profits which would have accrued to it if it were an independent enterprise and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

(2) Profits included in the profits of an enterprise of one of the territories under sub-paragraph (1) of this paragraph shall be deemed to be income derived from sources in that territory and shall be taxed accordingly.

(3) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of sub-paragraph (1) of this paragraph, 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 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 that sub-paragraph.

5. Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

6. (1) Dividends paid by a company resident in one of the territories to a resident of the other territory who is subject to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first-mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company:

Provided that dividends paid by a company resident in New Zealand to a person who is resident in Saint Christopher and Nevis may be included in that person's total income for the purposes of determining the amount of any New Zealand tax payable in respect of income of that person other than such dividends.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits, or income so derived.

7. (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph, the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trademark, or other like property, but does not include royalties or other amounts paid in respect of the operation of mines or quarries or of the extraction or removal of timber or other natural resources or rents or royalties in respect of motion picture films.

8. (1) Remuneration (other than pensions) paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the Government of the other territory if the individual is not ordinarily resident in that other territory or is ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for purposes of profit.

9. (1) An individual who is a resident of Saint Christopher and Nevis shall be exempt from New Zealand tax on profits or remuneration in respect of personal (including professional) services performed within New Zealand in any year of assessment if

- (a) he or she is present within New Zealand for a period not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a person resident in Saint Christopher and Nevis; and
- (c) the profits or remuneration are subject to Saint Christopher and Nevis tax.

(2) An individual who is a resident of New Zealand shall be exempt from Saint Christopher and Nevis tax on profits or remuneration in respect of personal (including professional) services performed within Saint Christopher and Nevis in any year of assessment if

- (a) he or she is present within Saint Christopher and Nevis for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a person resident in New Zealand; and
- (c) the profits or remuneration are subject to New Zealand tax.

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

10. (1) Any pension or annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and liable to tax in that other territory in respect thereof, shall be exempt from tax in the first mentioned territory.

(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 consideration of money paid.

11. A professor or teacher from one of the territories 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 other territory shall be exempt from tax in that other territory in respect of that remuneration.

12. A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in the other territory on payments made to him or her by persons in the first-mentioned territory for the purposes of his or her maintenance, education or training.

13. Income of a person who is a resident of Saint Christopher and Nevis (other than dividends paid by a company resident in New Zealand) which is exempt from New Zealand tax under any provision of the present Arrangement shall not be included in that person’s total income for the purposes of determining the amount of any New Zealand tax payable in respect of income of that person which is assessable to New Zealand tax.

14. (1) Subject to the provisions of the law of Saint Christopher and Nevis regarding the allowance as a credit against Saint Christopher and Nevis tax of tax payable in a territory outside Saint Christopher and Nevis, New Zealand tax payable, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against any Saint Christopher and Nevis tax payable in respect of that income, and where such income is an ordinary dividend paid by a company resident in New Zealand, the credit shall take into account the New Zealand tax payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the New Zealand tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(2) For the purposes of this paragraph any amount which is included in a person’s taxable income under any provision of the law of New Zealand regarding the taxation of income from the business of insurance shall be deemed to be derived from sources in New Zealand.

(3) Where the New Zealand tax is payable in respect of income derived from sources in Saint Christopher and Nevis by a person who is a resident of New Zealand, being income in respect of which Saint Christopher and Nevis tax is payable, whether directly or by deduction, the Saint Christopher and Nevis tax so payable (reduced by the amount of any relief or repayment attributable to that income to which that person is entitled under the law of Saint Christopher and Nevis) 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 against the New Zealand tax (other than the social security charge) payable in respect of that income:

Provided that where the income is a dividend paid by a company resident in Saint Christopher and Nevis the credit shall be allowed only if the recipient elects for the purposes of this sub-paragraph to have the amount of such dividend together with Saint Christopher and Nevis tax (as so reduced) included in his or her assessable income for the purposes of New Zealand tax.

(4) Where such income is an ordinary dividend paid by a company resident in Saint Christopher and Nevis, the credit shall take into account (in addition to any Saint Christopher and Nevis income tax appropriate to the dividend) the Saint Christopher and Nevis profits tax payable by the company in respect of its profits, and where it is a dividend paid on a participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(5) For the purposes of this paragraph, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

15. (1) The taxation authorities of New Zealand and Saint Christopher and Nevis shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons concerned with the assessment and collection of the taxes which are the subject of this Arrangement, and no information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this paragraph, the term "taxation authorities" means, in the case of New Zealand, the Commissioner of Taxes or his or her authorised representative; and in the case of Saint Christopher and Nevis the Comptroller of Inland Revenue or his or her authorised representative.

16. This Arrangement shall come into force on the 11th day of August, 1951, and shall thereupon have effect,

- (a) in New Zealand,
 - (i) as respects income tax for the year of assessment beginning on the first day of April, 1951, and subsequent years;
 - (ii) as respects social security charge on salaries and wages as from the first day of April, 1951;
 - (iii) as regards social security charge on income other than salaries and wages as from the first day of April, 1950, and subsequent years;
- (b) in Saint Christopher and Nevis, as respects income tax for the year of assessment beginning on the first day of January, 1951, and subsequent years.