STATUTORY INSTRUMENTS

1980 No. 1531

INCOME TAX

The Double Taxation Relief (Taxes on Income) (New Zealand) Order 1980

Laid before the House of Commons in draft

Made - - - - 13*th October* 1980

At the Court at Buckingham Palace, the 13th day of October 1980

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970 (a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the Income and Corporation Taxes Act 1970, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (New Zealand) Order 1980.

2. It is hereby declared—

(a) that the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (New Zealand) Order 1966 (b) have been made with the Government of New Zealand with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of New Zealand; and

(b) that it is expedient that those arrangements should have effect.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1970 c. 10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c.41) and section 10 of the Capital Gains Tax Act 1979 (c.14).

(b) S.I. 1966/1020.

SCHEDULE

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF NEW ZEALAND AMENDING THE AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT WELLINGTON ON 13 JUNE 1966.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand;

Desiring to conclude a Protocol to amend the Agreement between the Contracting Governments for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income signed at Wellington 13 June 1966 (hereinafter referred to as "the Agreement");

Have agreed as follows:

ARTICLE 1

Article VI of the Agreement shall be deleted and replaced by the following:

"ARTICLE VI

(1) *(a)* Dividends derived from a company which is a resident of the United Kingdom by a resident of New Zealand may be taxed in New Zealand.

(b) Where a resident of New Zealand is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount of the dividend and of that tax credit at a rate not exceeding 15 per cent.

(c) Except as aforesaid dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of New Zealand shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) An individual who is a resident of New Zealand and who receives dividends from a company which is a resident of the United Kingdom shall, provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax. Any such credit may be treated for the purposes of New Zealand tax as assessable income from sources in the United Kingdom.

(3) Dividends derived from a company which is a resident of New Zealand and which are beneficially owned by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in New Zealand but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(4) The term "dividends" as used in this Article includes any item which, under the law of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(5) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the territories, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article III shall apply.

(6) If the beneficial owner of the dividends being a resident of one of the territories owns 10 per cent or more of the class of shares in respect of which the dividends are paid and is not taxed on those dividends in that territory then paragraphs (1), (2) and (3) of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares in question.

Provided that this paragraph shall apply only if the shares were acquired primarily for the purpose of securing the benefit of this Article and not for *bona fide* commercial reasons.

(7) Where a company which is a resident of one of the territories derives profits or income from the other territory, that other territory 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 territory or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other territory, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other terrritory."

ARTICLE 2

Article IX of the Agreement shall be deleted and replaced by the following:

ARTICLE IX

(1) Income or gains derived by a resident of one of the territories from the alienation of immovable property situated in the other territory may be taxed in that other territory.

(2) Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the territories has in the other territory or of movable property pertaining to a fixed base available to a resident of one of the territories in the other territory for the purpose of performing independent personal services including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base may be taxed in that other territory.

(3) Income or gains derived by a resident of one of the territories from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be exempt from tax in the other territory.

(4) Income or gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in one of the territories, may be taxed in that territory.

(5) Income or gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4), shall be taxable only in the territory of which the alienator is a resident."

ARTICLE 3

(1) This Protocol, which shall form an integral part of the Agreement, shall enter into force on the date when the last of all such things shall have been done in the United Kingdom and New Zealand as are necessary to give the Protocol the force of law in the United Kingdom and New Zealand respectively, and shall thereupon have effect:

(a) in the United Kingdom.

(i) in relation to dividends paid on or after 6 April 1978;

(ii) as regards Article 2 for any year of assessment or financial year beginning on or after 1 April 1978.

(b) in New Zealand for any income year beginning on or after 1 April 1978.

(2) Where any provision of the 1966 Agreement would have afforded any greater relief from tax any such provision as aforesaid shall continue to have effect:

(a) in the United Kingdom in relation to any year of assessment or financial year;

(b) in New Zealand for any income year;

beginning before the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at London this 25th day of March 1980.

For the Government of the United Kingdom of Great Britain and Northern Ireland:
P. A. R. BLAKER

For the Government of New Zealand:
L. W. GANDAR

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Protocol scheduled to this Order makes certain alterations to the Agreement set out in the Schedule to the Double Taxation Relief (Taxes on Income) (New Zealand) Order 1966. These alterations follow mainly from the introduction of the new United Kingdom corporation tax system which, so far as it relates to the tax treatment of dividends paid by a United Kingdom company to overseas shareholders, came into operation on 6 April 1973.

Where a United Kingdom company pays a dividend to a New Zealand resident individual, the recipient will, subject to certain conditions, be entitled to the tax credit which would be payable to a United Kingdom resident individual less a sum of not more than 15 per cent of the aggregate of the dividend and the credit.

The Protocol also provides that income or gains arising from the disposal of immovable property may be taxed in the country where the property is situated. In addition gains from the alienation of shares in a company whose assets consist principally of immovable property may now be taxed in the country where such immovable property is situated.

The Protocol is to take effect in the United Kingdom for the year of assessment or financial year beginning in 1978 and in relation to dividends to those paid on or after 6 April 1978. However where any provision of the 1966 Agreement would have afforded any greater relief such provision shall continue to have effect in the United Kingdom for any year of assessment or financial year beginning before the entry into force of this Protocol.

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