



SUPPLEMENT No. 3

TO

THE CYPRUS GAZETTE No. 3586 OF 14TH NOVEMBER, 1951.
SUBSIDIARY LEGISLATION.

No. 579.

THE INCOME TAX LAW.

CAP. 297 AND LAWS 13 OF 1950 AND 8 OF 1951.

ORDER IN COUNCIL No. 2515

MADE UNDER SECTION 46 (1).

A. B. WRIGHT,
Governor.

Whereas by an Agreement made between the Government of the United Kingdom and the Government of the New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income it was provided that that Agreement shall, by a written notification of extension given by one of the contracting Governments to the other contracting Government and subject to such modifications as may be specified in the notification, be extended to any of the colonies named in the notification ;

And whereas by a notification given on the 12th day of June, 1951, by the Government of the United Kingdom to the Government of New Zealand the aforesaid Agreement was, subject to certain modifications contained in the said notification, extended to Cyprus ;

And whereas the Agreement thus extended to Cyprus is set out in the Schedule to this Order :

Now, therefore, in exercise of the powers vested in me by section 46 (1) of the Income Tax Law, I, the Governor, with the advice of the Executive Council, do hereby order as follows :—

Cap. 297
13 of 1950
8 of 1951

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (New Zealand) Order, 1951.

2. It is hereby declared—

(a) that the arrangements specified in the Agreement 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 (including social security charge) 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 in relation to income tax notwithstanding anything in the Law contained.

SCHEDULE.

ARRANGEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF CYPRUS 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 Agreement are—

(a) In New Zealand:

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

(b) In Cyprus:

The income tax (hereinafter referred to as “Colonial tax”).

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

2.—(1) In this Agreement, 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 term “the Colony” means Cyprus.

(c) The terms “one of the territories” and “the other territory” mean New Zealand or the Colony, as the context requires.

(d) The term “tax” means New Zealand tax or Colonial tax, as the context requires.

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

(f) The term “company” includes any body corporate.

(g) The term “resident of New Zealand” and “resident of the Colony” mean respectively any person who is resident in New Zealand for the purposes of New Zealand tax and not resident in the Colony for the purposes of Colonial tax and any person who is resident in the Colony for the purposes of Colonial 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 and not resident in the Colony if its business is managed and controlled in New Zealand and as resident in the Colony and not resident in New Zealand if its business is managed and controlled in the Colony.

(h) 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 the Colony, as the context requires.

(i) The terms “New Zealand enterprise” and “Colonial 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 the Colony; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a New Zealand enterprise or a Colonial enterprise, as the context requires.

(j) 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.

- (k) 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.

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 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.

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.

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.

- (2) The terms "New Zealand tax" and "Colonial tax", as used in the present Agreement do not include any tax payable in New Zealand or the Colony which represents a penalty imposed under the law of New Zealand or the Colony relating to the taxes which are the subject of the present Agreement.

- (3) In the application of the provisions of this Agreement 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 this Agreement.

3.—(1) The industrial or commercial profits of a Colonial 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: 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 New Zealand enterprise shall not be subject to Colonial tax unless the enterprise is engaged in trade or business in the Colony through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Colony, 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 that 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.

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.

(4) Profits derived by an enterprise of one of the territories from sales, 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 to the enterprise for acceptance.

(5) 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 operate 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 paragraph (1) of this Article 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 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 that paragraph.

5. Notwithstanding the provisions of Articles 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 a resident of the Colony 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 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 Article in respect of so much of any such royalty as exceeds an amount which represents a fair and reasonable consideration for the rights, for which the royalty is paid.

(2) In this Article 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, trade-mark, 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 one of the contracting Governments to any individual for services rendered to that contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

(2) 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.

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

(a) he is present within the Colony 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, and

(c) the profits or remuneration are subject to New Zealand tax.

(2) An individual who is a resident of the Colony 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 Colony, and

(c) the profits or remuneration are subject to Colonial tax.

(3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, 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 or trade apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

13. Income of a person who is a resident of the Colony (other than dividends paid by a company resident in New Zealand) which is exempt from New Zealand tax under any provision of the present Agreement 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 the Colony regarding the allowance as a credit against Colonial tax of tax payable in a territory outside the Colony, Colonial tax payable, whether directly or by deduction, in respect of income from sources within the Colony shall be allowed as a credit against any Colonial tax payable in respect of that income. 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 the 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.

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.

(2) Where New Zealand tax is payable in respect of income derived from sources in the Colony by a person who is a resident of New Zealand, being income in respect of which Colonial tax is payable, whether directly or by deduction, the Colonial 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 the Colony) 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 the Colony the credit shall be allowed only if the recipient elects for the purposes of this paragraph to have the amount of such dividend together with the Colonial tax (as so reduced) included in his assessable income for the purposes of New Zealand tax.

(3) For the purposes of this Article 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 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 this Agreement 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 this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court) concerned with the assessment or collection of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means, in the case of New Zealand, the Commissioner of Taxes or his authorized representatives; in the case of the Colony, the Commissioner of Income Tax or his authorized representative.

16. This Agreement shall come into force on the date on which the last of all such things shall have been done in New Zealand and the Colony as are necessary to give the Agreement the force of law in New Zealand and the Colony respectively, and shall thereupon have effect—

- (a) in New Zealand, as respects income tax for the year of assessment beginning on the 1st day of April, 1951, and subsequent years; as respects social security charge on salaries and wages as from the 1st day of April, 1951; and as respects social security charge on income other than salaries and wages for the financial year beginning on the 1st day of April, 1950, and subsequent years;
- (b) in the Colony, as respects income tax for the year of assessment beginning on the 1st day of January, 1951, and subsequent years.

17. This Agreement shall continue in effect indefinitely but either of the contracting Governments may, on or before the 30th day of September in any calendar year after the year 1951 give notice of termination to the other contracting Government and, in such event, this Agreement shall cease to be effective—

- (a) in New Zealand, for any year of assessment beginning on or after the 1st day of April in the calendar year next following that in which such notice is given;
- (b) in the Colony, for any year of assessment beginning on or after the 1st day of January in the calendar year next following that in which such notice is given.

Ordered this 5th day of November, 1951.

(M.P. 508/45/3.)

D. A. SHEPHERD,
Clerk of the Executive Council.