

FOURTH SCHEDULE

(Section 87)

Income Tax (Double Taxation Relief) (Canada) Order

1. **Short title.**

This Order may be cited as the Income Tax (Double Taxation Relief) (Canada) 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 Canada 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 Canada; and
- (b) that it is expedient that those arrangements shall have effect.

SCHEDULE TO THE ORDER

(Regulation 2)

Arrangement between the Government of Canada 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 Canada, the income taxes, including surtaxes, and excess profits tax imposed by Canada (hereinafter referred to as “Canadian 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 Canada or in Saint Christopher and Nevis after this Arrangement has come into force.
- 2. (1) In this Arrangement, unless the context otherwise requires,
 - (a) the terms “one of the territories” and “the other territory” mean Saint Christopher and Nevis or Canada, as the context requires;
 - (b) the term “tax” means Saint Christopher and Nevis tax or Canadian tax, as the context requires;
 - (c) the term “person” includes any body of persons, corporate or not corporate;
 - (d) the term “company” includes any body corporate;
 - (e) the terms “resident of Saint Christopher and Nevis” and “resident of Canada” mean, respectively, any person who is resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax and not resident in Canada for the purposes of Canadian tax, and any person who is resident in Canada for the purposes of Canadian tax and not resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax; and a company shall be regarded as resident in Saint Christopher and Nevis if its business is managed and controlled in Saint Christopher and Nevis, and as resident in Canada if its business is managed and controlled in Canada;
 - (f) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of Saint Christopher and Nevis or a person who is a resident of Canada, as the context requires;

- (g) the terms “Saint Christopher and Nevis enterprise” and Canadian enterprise” mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of Saint Christopher and Nevis and an industrial or commercial enterprise or undertaking carried on by a resident of Canada; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a Saint Christopher and Nevis enterprise or a Canadian enterprise, as the context requires;
- (h) the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he or she regularly fills orders on its behalf.

(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.

(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 term “industrial or commercial profits” as used in the present Arrangement, does not include income in the form of dividends, interest, rents or royalties, management charges, or remuneration for labour or personal services.

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

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

(2) The industrial or commercial profits of a Canadian 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, and if it is so engaged, tax may be imposed on those profits by Saint Christopher and Nevis, 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 if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm’s length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be deemed to arise in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

(5) 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.

4. 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 would be made between independent enterprises;

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

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) The rate of Canadian tax on income (other than earned income) derived from sources within Canada by a resident of Saint Christopher and Nevis who is subject to tax in respect thereof and not engaged in trade or business in Canada through a permanent establishment situated therein, shall not exceed 15 per cent.

(2) Notwithstanding the provisions of the foregoing paragraph, dividends paid to a company which is a resident of Saint Christopher and Nevis by a Canadian company, all of whose shares (less director's qualifying shares) which have under all circumstances full voting rights are beneficially owned by the former company shall be exempt from Canadian tax:

Provided that exemption shall not be allowed if ordinarily more than one-quarter of the gross income of the Canadian company is derived from interest and dividends other than interest and dividends from any wholly-owned subsidiary company.

(3) Income (other than earned income) derived from sources within Saint Christopher and Nevis by an individual who is a resident of Canada, subject to Canadian tax in respect of the income, and not engaged in trade or business in Saint Christopher and Nevis through a permanent establishment situated therein, shall not be liable to tax in Saint Christopher and Nevis at a rate in excess of the rate applicable to a company.

7. Copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including rents or royalties in respect of motion picture films) and derived from sources within one of the territories by a resident of the other territory who is liable 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.

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) Any pension 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 immediately prior to the cessation of those services the remuneration therefor was exempt from tax in that territory, whether under sub-paragraph (1) of this paragraph or otherwise, or would have been exempt under that sub-paragraph if the present Arrangement had been in force at the time when the remuneration was paid.

(3) 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 Canadian tax on profits or remuneration in respect of personal (including professional) services performed within Canada in any taxation year if

- (a) he or she is present within Canada 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 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 Canada 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 Canada; and
- (c) the profits or remuneration are subject to Canadian 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 artists, musicians and athletes.

10. (1) Any pension (other than a pension paid by the Government of Canada for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Canada by an individual who is a resident of Saint Christopher and Nevis and subject to tax in respect thereof, shall be exempt from Canadian tax.

(2) Any pension (other than a pension paid by the Government of Saint Christopher and Nevis for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Saint Christopher and Nevis by an individual who is a resident of Canada and subject to Canadian tax in respect thereof, shall be exempt from Saint Christopher and Nevis tax.

(3) 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 that 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. (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, Canadian tax payable, in respect of income from sources within Canada 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 Canadian debtor, the credit shall take into account (in addition to any Canadian income tax chargeable directly or by deduction in respect of the dividend) the Canadian income 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 Canadian income 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 the foregoing sub-paragraph and of the aforesaid provisions of the law of Saint Christopher and Nevis, so much of the tax chargeable under the law of Canada relating to excess profits tax as is chargeable otherwise than by reference to excess profits shall be treated as income and not as excess profits tax.

(3) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada, Saint Christopher and Nevis tax payable in respect of income from sources within Saint Christopher and Nevis shall be deducted from any Canadian tax payable in respect of that income.

(4) 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.

14. (1) The taxation authorities of Saint Christopher and Nevis and Canada 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) The taxation authorities of Saint Christopher and Nevis and Canada may consult together as may be necessary for the purpose of carrying out the provisions of the present Arrangement, and in particular, the provisions of paragraphs 3 and 4.

(3) As used in this paragraph, the term "taxation authorities" means, in the case of Canada, the Minister of National Revenue or his or her authorised representatives; and in the case of Saint Christopher and Nevis the Comptroller of Inland Revenue or his or her authorised representative.

15. This Arrangement shall be deemed to have had effect as on the 26th day of September, 1951, and shall as from such date have effect,

- (a) in Canada, as respects income taxes, including surtaxes, for the taxation year 1951, 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.