



POLICY AND STRATEGY

Policy report: Cabinet Paper: Amending Protocols to Tax Treaties with Switzerland and Guernsey: Approval for Signature

Date:	27 May 2019	Priority:	Medium
Security level:	Sensitive	Report no:	IR2019/258

Action sought

	Action sought	Deadline
Minister of Revenue	<p>Agree to the recommendations of this report.</p> <p>Refer the attached papers to the Minister of Foreign Affairs.</p> <p>Agree to Approve and lodge the attached Cabinet paper and attachments with the Cabinet Office.</p>	Thursday 20 June 2019, 10am

Contact for telephone discussion (if required)

Name	Position	Telephone
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s 9(2)(a)	Senior Policy Analyst	

27 May 2019

Minister of Revenue

Cabinet Paper: Amending Protocol to Tax Treaties with Switzerland and Guernsey: Approval for Signature

Background

1. Officials have concluded negotiations for protocols to amend New Zealand's existing double tax agreement (DTA) with Switzerland, which was signed in 1980, and existing tax information exchange agreement (TIEA) with Guernsey, which was signed in 2009.
2. The protocols relate to the inclusion of model treaty provisions in the parent agreements arising out of the international Base Erosion and Profit Shifting (BEPS) initiative, led by the Organisation for Economic Cooperation and Development (OECD) and the G20. The OECD/G20 15-point BEPS Action Plan is designed to address international concerns that multinationals often seem to pay little or no tax anywhere in the world.
3. This report asks you to approve and lodge the attached Cabinet paper with the Cabinet External Relations and Security Committee for its meeting on Tuesday 25 June 2019. The Cabinet paper and enclosed attachments need to be lodged with Cabinet Office by 10am, Thursday 20 June 2019.
4. The Cabinet paper notes the conclusion of negotiations for an amending protocol to the DTA with Switzerland, and an amending protocol to the TIEA with Guernsey. Copies of the full text of the amending protocols are enclosed.

Base Erosion and Profit Shifting Action Plan

5. The BEPS Action Plan included several work streams that looked into the ways that multinational enterprises have misused tax treaties. These work streams resulted in the development of model treaty provisions to be included in future and existing tax treaties. Many of these provisions are referred to as "minimum standards", and their inclusion will be monitored by an international peer review process.

6. To facilitate the inclusion of these model treaty provisions in existing DTAs, Action 15 of the BEPS Action Plan focused on the development of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the Multilateral Instrument or MLI), which New Zealand signed in 2017 and ratified in 2018.

7. A few of New Zealand's DTAs will not be amended by the MLI, and tax treaties that are not full DTAs are outside the scope of the MLI. Where this is the case, bilateral negotiations will need to be undertaken in order to meet the appropriate minimum standards. The protocols with Switzerland and Guernsey have been negotiated for this purpose.

8. The provisions in the amending protocols relate to the inclusion of the BEPS minimum standards and to best practice. The provisions are primarily intended to protect the tax base of each treaty partner by reducing the ability of non-residents to use the treaty to engage in tax-avoidance behaviour. The provisions are also intended to improve existing dispute-resolution mechanisms to make them more effective for taxpayers and reduce uncertainty.

9. The features of the two amending protocols are discussed in detail in the appendix to the Cabinet paper and the accompanying draft national interest analysis (NIA) prepared in respect of each protocol.

Next steps

10. The Cabinet paper recommends that Cabinet authorise the signing of the two amending protocols with Switzerland and Guernsey, and requests authorisation for the protocols to be submitted for Parliamentary treaty examination, under Standing Orders 397-400 of the House of Representatives, as the next step towards entry into force. This process requires each amending protocol, with its accompanying NIA, to be tabled in the House of Representatives and referred to the Foreign Affairs, Defence and Trade Committee. The NIAs are enclosed as attachments to the Cabinet paper.

11. Subject to the successful completion of the Parliamentary treaty examination process, the Cabinet paper also seeks approval for the drafting of Orders in Council to give effect to each amending protocol, submission of the Orders in Council to Cabinet, and the subsequent exchange of diplomatic notes to bring the amending protocols into force.

12. The Cabinet Manual requires Cabinet approval for any treaty action to be sought by the relevant Minister of the department with the main policy interest in the treaty either jointly, or in consultation with the Minister of Foreign Affairs for consultation. Once the agreement of the Minister of Foreign Affairs is obtained, we recommend that the paper, along with the full text of the amending protocols and the NIAs, is referred to the Cabinet Office before 10am on Thursday 20 June 2019.

13. You will need to decide who will sign each of the amending protocols on New Zealand's behalf. Recent New Zealand DTAs have been signed at both Ministerial and Ambassadorial levels. For example, the Hong Kong DTA (2010) was signed by the Minister of Finance; the Japan DTA (2012) was signed by the New Zealand Ambassador to Japan; the Canada DTA (2012, and 2014 for an amending protocol) was signed by the Minister of Revenue; and the Samoa DTA (2015) was signed by the Prime Minister.

14. If the chosen signatory is a person other than the Prime Minister, the Governor General, or the Minister for Foreign Affairs, an Instrument of Full Powers will need to be obtained to allow them to sign the amending protocols. The Ministry of Foreign Affairs and Trade will prepare this Instrument and arrange for its signature.

15. Although there are no concrete signing opportunities at present, our Swiss counterparts have asked for the amending protocol with Switzerland to be signed in Wellington in late July 2019. This will enable the amending protocol to enter into force in 2020. The person signing on behalf of Switzerland would be the Swiss Ambassador to New Zealand.

16. As Guernsey is a dependency of the British Crown, one possibility would be for the New Zealand High Commissioner to the United Kingdom to sign the amending protocol in London. Alternatively, a Minister could sign the protocol, if any visits are planned in the foreseeable future.

17. We will liaise with the Ministry of Foreign Affairs and Trade to arrange appropriate signing opportunities.

Consultation

18. The Ministry of Foreign Affairs and Trade, and the Treasury, were consulted during the preparation of the attached Cabinet paper and NIAs. These agencies agree with the recommendations.

Proactive release considerations

19. Officials recommend that the proactive release of the attached Cabinet paper should be delayed until the appropriate signatures have been obtained, and our tax counterparts in Switzerland and Guernsey have agreed to the release. The release will be subject to redaction as appropriate under the Official Information Act 1982.

Recommended action

20. I recommend that you:

(a) **Note** the contents of this report, the attached Cabinet Paper, and the attached national interest analyses.

Noted

(b) **Agree** to delay the proactive release of the attached Cabinet paper until the appropriate signatures have been obtained, and our tax counterparts in Switzerland and Guernsey have agreed to the release. Your office will then be consulted about the proactive release, which will be subject to redaction as appropriate under the Official Information Act 1982.

Agreed / Not agreed

(c) **Refer** copies of the Cabinet paper and national interest analyses to the Minister of Foreign Affairs.

Referred

(d) **Obtain** the agreement of the Minister of Foreign Affairs for the attached Cabinet paper to be referred to the Cabinet External Relations and Security Committee.

Obtained / Not obtained

(e) **Agree**, that once response is received from the Minister of Foreign Affairs, to approve and lodge the attached paper with the Cabinet Office, together with the text of each amending protocol and accompanying national interest analysis, by 10am on Thursday 20 June 2019.

Agreed / Not agreed

Carmel Peters
Policy Manager
Policy and Strategy

Hon Stuart Nash
Minister of Revenue

