

Hon Stuart Nash, Minister of Revenue

Information Release

Double Tax Agreements (China) Order 2019

November 2019

Availability

This information release is available on Inland Revenue's Tax Policy website at <http://taxpolicy.ird.govt.nz/publications/2019-ir-cab-leg-19-sub-0148/overview>

Documents in this information release

1. IR2019/409 – Tax policy report: Cabinet paper – Double Tax Agreements (China) Order 2019 (2 August 2019)
2. LEG-19-SUB-0148 – Cabinet paper: Double Tax Agreements (China) Order 2019 (24 September 2019)
3. LEG-19-MIN-0148 – Minute: Double Tax Agreements (China) Order 2019 (24 September 2019)

Additional information

The Cabinet paper was considered by the Cabinet Legislation Committee on 24 September 2019 and confirmed by Cabinet on 30 September 2019.

One attachment to the Cabinet paper is not included in this information release as it is publicly available:

- Double Tax Agreements (China) Order 2019.

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

- 9(2)(a) to protect the privacy of natural persons, including deceased people

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POLICY AND STRATEGY

Tax policy report: **Cabinet paper – Double Tax Agreements (China) Order 2019**

Date:	2 August 2019	Priority:	Medium
Security level:	In Confidence	Report number:	IR2019/409

Action sought

	Action sought	Deadline
Minister of Revenue	<p>Sign and refer the attached Cabinet paper and accompanying cover sheet to the Cabinet Office.</p> <p>Refer a copy of this report and Cabinet paper to the Minister of Foreign Affairs for his information</p>	10am, Thursday 19 September 2019

Contact for telephone discussion (if required)

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

2 August 2019

Minister of Revenue

Cabinet paper – Double Tax Agreements (China) Order 2019

1. This report seeks your signature and referral to Cabinet Office of the attached Cabinet paper which, in turn, seeks Cabinet approval to submit to the Executive Council the *Double Tax Agreements (China) Order 2019*.
2. The Order will give effect under New Zealand law to a new Double Tax Agreement (DTA) signed with China on 1 April 2019. The new DTA replaces a previous DTA that has been in force with China since 1986.
3. The timeline we are working to is for the paper to be considered by the Cabinet Legislation Committee (LEG) on 24 September 2019, and Cabinet on 30 September 2019. To meet these meeting dates, the paper will need to be lodged with Cabinet Office by 10am on Thursday 19 September 2019.
4. In addition to signing the Cabinet paper, you are requested to sign the attached Order in Council "goatskin" cover sheet, for submission to Cabinet office with the Cabinet paper.
5. A draft copy of the Order in Council is attached for your information. The certificate and signature copies of the Order will be sent direct to Cabinet Office by the Parliamentary Counsel Office, for associating with the Cabinet paper.
6. Cabinet has already considered the new DTA, when it approved the signing of the DTA on 19 March 2018 (CAB-18-MIN-0087 refers). Parliamentary treaty examination has now been completed, with the Finance and Expenditure Committee reporting to the House on 25 July 2019 that it "welcomed the treaty" and "encouraged the Government to speedily bring it into force".
7. The making of an Order in Council is one of the two remaining steps required for entry into force under New Zealand law. After the Order has been made, the final step will be to exchange with China diplomatic notes that confirm each country has completed all of its respective domestic steps for entry into force. The DTA will enter into force on the date of the later note.
8. China has not yet forwarded its diplomatic note, but we expect the exchange to be completed (and the DTA brought into force) either by the end of 2019 or in early 2020.
9. We will provide your office with suggested talking points for taking the paper through LEG.
10. It would be more normal to issue a press statement at the time the DTA enters into force rather than on the making of the Order in Council. We will discuss appropriate publicity with your office.
11. The attached Cabinet paper should be proactively released within 30 working days of Cabinet making final decisions, subject to minor redactions. A redacted copy of this report is attached for reference.

Recommended action

We recommend that you:

12. **Sign and refer** the attached Cabinet paper and accompanying Order in Council cover sheet to the Cabinet Office by 10am, Thursday 19 September 2019, for consideration by the Cabinet Legislation Committee on Tuesday 24 September 2019.

Signed and referred

13. **Note** that the Parliamentary Counsel Office will arrange for certificate and signature copies of the Order in Council to be sent directly to the Cabinet Office.

Noted

14. **Refer** a copy of this report and the attached Cabinet paper to the Minister of Foreign Affairs for his information.

Referred

15. **Note** that officials will discuss appropriate publicity with your office.

Noted

16. **Agree** to the release of the attached Cabinet paper, associated minutes, and key advice papers, within 30 working days of Cabinet making final decisions, subject to minor redactions.

Agree/Disagree

Carmel Peters
Policy Manager
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2019

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

DOUBLE TAX AGREEMENTS (CHINA) ORDER 2019

Proposal

1. This paper proposes the submission of the accompanying draft Order in Council, the *Double Tax Agreements (China) Order 2019*, to the Executive Council.
2. Once made, the Order 2019 will incorporate into New Zealand law the recently signed *Agreement between The Government of New Zealand and The Government of the People's Republic of China For the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance* (the China DTA).

Policy

3. This paper gives effect to policy decisions made by Cabinet on 19 March 2018 (*CAB-18-MIN-0087* refers) when it approved the signing of the China DTA and the ensuing steps for entry into force.
4. Following signature, on 1 April 2019, and the successful completion of Parliamentary treaty examination, the next step is for the making of an Order in Council to give legislative effect to the China DTA under New Zealand law.
5. DTAs are primarily entered into to foster increased trade, investment and other economic activity with other countries by reducing, and in some cases entirely eliminating, tax barriers to such cross-border activity.
6. New Zealand currently has 40 DTAs in force, covering the majority of New Zealand's major trading and investment partners. This includes a DTA with China entered into in 1986. The new DTA with China replaces that existing DTA with a modernised agreement.
7. The Order in Council giving effect to the China DTA will be made under Section BH 1 of the Income Tax Act 2007, which expressly authorises the making of such Orders for the purpose of giving overriding effect to DTAs.

Previous consideration

8. As noted, Cabinet approved the signing of the China DTA in March 2018. Specifically, Cabinet:
 - agreed that the text of the new China DTA and the accompanying *[National Interest Analysis]* NIA be tabled in the House of Representatives for Parliamentary treaty examination, in accordance with Standing Orders 397-400;

- noted that the China DTA will be incorporated into New Zealand domestic law through an Order in Council, made pursuant to section BH 1 of the Income Tax Act 2007;
- invited the Minister of Revenue to issue drafting instructions to the Parliamentary Counsel Office to draft the appropriate Order in Council to give effect to the new China DTA;
- noted that, following satisfactory completion of the Parliamentary treaty examination, the Order in Council will be submitted to Cabinet for approval; and
- authorised officials, following completion of the Parliamentary treaty examination and promulgation of the Order in Council, to bring the new China DTA into force by exchanging diplomatic notes with China.

Entry into force of the China DTA

9. Pursuant to the above 2018 Cabinet decision, the China DTA was signed on 1 April 2019. It has also undergone Parliamentary treaty examination, with the Finance and Expenditure Committee reporting to the House on 25 July 2019 that it “welcomed the treaty” and “encouraged the Government to speedily bring it into force”. The remaining steps are to:
 - make an Order in Council incorporating the China DTA into New Zealand law; and
 - exchange diplomatic notes with China to bring the China DTA into force.
10. Once diplomatic notes have been exchanged, and the China DTA has entered into force, its provisions will generally have effect for New Zealand from the start of the next tax year. However, provisions that relate to withholding taxes will have effect for New Zealand from 1 January of the calendar year following entry into force.
11. China has not yet forwarded its diplomatic note to New Zealand. Once New Zealand has forwarded its note to China, enquiries will be made as to when China will be ready to send its diplomatic note. I expect that the China DTA will enter into force either by the end of 2019 or in early 2020.
12. As the provisions of the China DTA take effect, the corresponding provisions in the existing China DTA will cease to have effect. The 1986 Order in Council that gave effect to the existing China DTA will subsequently be revoked, under the terms of the attached Order in Council.

Timing and 28-day rule

13. The 28-day rule requires that regulations be notified in the *New Zealand Gazette* 28 days prior to their coming into effect. No waiver of the 28-day rule is proposed.

Compliance

14. The attached Order in Council complies with:
 - the principles of the Treaty of Waitangi;

- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - relevant international standards and obligations; and
 - the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
15. The Order generally complies with principles and guidelines set out in the Privacy Act 1993. However, as is the case for all DTAs, the information-exchange provisions of the China DTA require an override of the Privacy Act 1993 to ensure that they are not constrained by certain privacy principles set out in that Act (such as the limitation imposed, at section 6 of the Act, on the disclosure of personal information). This is expressly provided for under section BH 1 of the Income Tax Act 2007.

Legislative implications

16. Once the China DTA is given legislative effect in New Zealand by Order in Council, it will have effect according to its terms despite anything to the contrary in the Inland Revenue Acts, the Official Information Act 1982, and the Privacy Act 1993. This overriding effect is standard for all DTAs and is the reason why DTAs are subjected to Parliamentary treaty examination. As noted, no concerns were identified by Select Committee during treaty examination consideration.
17. The override of the Inland Revenue Acts is necessary to give effect to the tax provisions in the China DTA (such as the allocation of taxing rights).
18. The override of the Official Information Act 1982 is to allow for confidential communications between jurisdictions to remain confidential.
19. The override of the Privacy Act 1993 is, as noted above, to permit the exchange of information provisions of the China DTA to operate without constraint.

Regulations Review Committee

20. I am not aware of any grounds on which the Regulations Review Committee might draw the Order to the attention of the House under Standing Order 318.

Certification by Parliamentary Counsel

21. The Parliamentary Counsel Office has certified that the Order in Council is in order for submission to Cabinet.

Regulatory Impact Analysis

22. A regulatory impact statement is not required for the Order. The Double Tax Agreements (China) Order 2019 implements an international treaty for which a NIA has previously been prepared and considered by Cabinet (see section on previous consideration). The NIA constitutes an “extended NIA” (that is, it incorporates all of the requirements of a regulatory impact statement). The NIA was reviewed by Inland Revenue and was certified as meeting the adequacy criteria.

Publicity

23. The new Order will be notified in the *New Zealand Gazette*. I will arrange appropriate additional publicity to announce the entry into force of the China DTA. The text of the China DTA, the NIA and the Finance and Expenditure Committee’s report following

Parliamentary treaty examination are already available to the public on Inland Revenue's Tax Policy website.

Proactive Release

24. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers within 30 working days of Cabinet making final decisions, subject to minor redactions under the Official Information Act 1982.

Consultation

25. The Parliamentary Counsel Office was consulted in the preparation of the Order in Council. The Ministry of Foreign Affairs and Trade and the Treasury were consulted during the previous consideration of the China DTA but were not specifically consulted on this paper (which merely gives effect to previous decisions). The Department of the Prime Minister and Cabinet has been informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that following previous consideration of and approval by Cabinet (*CAB-18-MIN-0087* refers), a new double tax agreement (DTA) between New Zealand and China was signed on 1 April 2019;
2. **note** that the new DTA replaces a previous DTA with China that was signed in 1986;
3. **note** that the Double Tax Agreements (China) Order 2019 will incorporate the China DTA into New Zealand law pursuant to section BH 1 of the Income Tax Act 2007;
4. **note** that, subject to the successful promulgation of the Order, the China DTA will be brought into force through an exchange of diplomatic notes with China (*CAB-18-MIN-0087* refers);
5. **authorise** the submission to the Executive Council of the attached Double Tax Agreements (China) Order 2019.

Authorised for lodgement

Hon Stuart Nash
Minister of Revenue



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Double Tax Agreements (China) Order 2019

Portfolio **Revenue**

On 24 September 2019, the Cabinet Legislation Committee:

- 1 **noted** that in March 2018, Cabinet approved a new double tax agreement (DTA) between New Zealand and China [CAB-18-MIN-0087]
- 2 **noted** that the DTA was signed on 1 April 2019;
- 3 **noted** that the new DTA replaces a previous DTA with China that was signed in 1986;
- 4 **noted** that the Double Tax Agreements (China) Order 2019 will incorporate the China DTA into New Zealand law pursuant to section BH 1 of the Income Tax Act 2007;
- 5 **noted** that, subject to the successful promulgation of the Order, the China DTA will be brought into force through an exchange of diplomatic notes with China [CAB-18-MIN-0087 refers];
- 6 **authorised** the submission to the Executive Council of the attached Double Tax Agreements (China) Order 2019 [PCO 22173/4.0].

Gerrard Carter
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Andrew Little
Hon Chris Hipkins (Chair)
Hon David Parker
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Damien O'Connor
Hon Tracey Martin
Hon Shane Jones
Hon Eugenie Sage
Hon Julie Anne Genter
Michael Wood, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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