

Double Taxation Relief (China) Amendment Order 1997

PURSUANT to section BH 1 of the Income Tax Act 1994, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following order.

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1 Title and commencement

- (1) This order may be cited as the Double Taxation Relief (China) Amendment Order 1997, and is part of the Double Taxation Relief (China) Order 1986¹ (“the principal order”).
- (2) This order comes into force on the 28th day after the date of its notification in the *Gazette*.

2 Giving effect to Protocol to Convention

- (1) Clause 2 of the principal order is amended by omitting the words “the Schedule to”, and substituting the words “Schedule 1 and Schedule 2 of”.
- (2) The principal order is amended—

¹ SR 1986/314

- (a) By omitting from the Schedule the heading “SCHEDULE”, and substituting the following headings:

Schedule 1”

- (b) By adding, as Schedule 2, the Schedule 2 set out in the Schedule of this order.

**Schedule
New Schedule 2 of principal order
Schedule 2**

**Second Protocol to the Agreement
Between the Government of New Zealand
and the Government of the People’s
Republic of China for the Avoidance of
Double Taxation and the Prevention of
Fiscal Evasion with Respect to Taxes on
Income**

Preamble

The Government of New Zealand and the Government of the People’s Republic of China,

Having regard to the Agreement between the Government of New Zealand and the Government of the People’s Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Wellington on the 16th day of September 1986 (hereinafter referred to as **the Agreement**),

Have agreed that the following provisions shall form an integral part of the Agreement:

Article 1

Paragraph 1 of Article 2 of the Agreement shall be deleted and replaced by the following:

- “1. The existing taxes to which the Agreement shall apply are:

Schedule 2—*continued*Second Protocol to the Agreement Between the
Government of New Zealand and the Government
of the People's Republic of China for the Avoidance
of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income—*continued*

- (a) in the People's Republic of China:
 - (i) the individual income tax;
 - (ii) the income tax for enterprises with foreign investment and foreign enterprises;
(hereinafter referred to as **Chinese tax**)
- (b) in New Zealand: the income tax;
(hereinafter referred to as **New Zealand tax**).

Article 2

Sub-paragraph (j) of paragraph 1 of Article 3 of the Agreement shall be deleted and replaced by the following:

- (j) the term **competent authority** means, in the case of China, the State Administration of Taxation or its authorised representative, and in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner.

Article 3

1. Sub-paragraphs (a) and (b) of paragraph 3 of Article 23 of the Agreement shall be deleted and replaced by the following:
 - (a) the provisions of Articles 7, 8, 9, 10 and the provisions of paragraphs 1, 3, and 4 of Article 19 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises and the provisions of Articles 73, 75, and 81 of the Detailed Rules and Regulations for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.

Schedule 2—*continued*Second Protocol to the Agreement Between the
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of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income—*continued*

2. Sub-paragraphs (c) and (d) of paragraph 3 of Article 23 of the Agreement shall be read as (b) and (c) respectively.

Article 4

1. Notwithstanding Article 23 of the Agreement, a New Zealand resident deriving income from the People's Republic of China, being income referred to in paragraph 3 of Article 23 of the Agreement, shall not be entitled to the benefit of that paragraph where:
 - (a) arrangements have been entered into by any person for the purpose of taking advantage of paragraph 3 of Article 23 for the benefit of that person or any other person that are contrary to the spirit and intent of that paragraph; or
 - (b) any benefit accrues or may accrue to any person who is neither a resident of New Zealand nor a resident of the People's Republic of China.
2. The competent authority of New Zealand shall consult with the competent authority of the People's Republic of China before imposing the above measures in every case.

Article 5

1. Articles 1 and 3 of this Second Protocol shall apply to income derived on or after 1 July 1991.
2. Article 2 of this Second Protocol shall apply from the date on which the Second Protocol enters into force.
3. Article 4 of this Second Protocol shall apply to income derived on or after the first day of the month following the date on which this Second Protocol enters into force.

Schedule 2—*continued*

Second Protocol to the Agreement Between the
Government of New Zealand and the Government
of the People's Republic of China for the Avoidance
of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income—*continued*

Article 6

1. Each of the Contracting States shall notify each other that the procedures required by its laws for the entry into force of this Second Protocol have been complied with.
2. This Second Protocol shall enter into force on the thirtieth day after the day of the later of the notifications referred to in paragraph 1 of this Article.

DONE at Wellington in duplicate this 7th day of October 1997 in the English and Chinese languages, both texts being equally authentic.

Cheng Faguang

Don McKinnon

FOR THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC
OF CHINA

FOR THE GOVERNMENT
OF NEW ZEALAND

MARIE SHROFF,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order adds a Protocol to the 1986 New Zealand China Double Tax Convention. The aim of the Protocol is to prevent tax avoidance through the use of tax sparing. The Protocol applies to income derived on or after the first day of the month following the date on which it comes into force in accordance with Article 2 of the Protocol.

**Double Taxation Relief (China)
Amendment Order 1997**

1997/309

Date of notification in *Gazette*: 27 November 1997.
