



## **Double Tax Agreements (China) Order 2019**

Patsy Reddy, Governor-General

### **Order in Council**

At Wellington this 30th day of September 2019

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section BH 1 of the Income Tax Act 2007 on the advice and with the consent of the Executive Council.

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**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**

## Order

### 1 Title

This order is the Double Tax Agreements (China) Order 2019.

### 2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

### 3 Commencement of agreement

The agreement and protocol set out in the Schedule (the **agreement**) come into force as provided for in Article 28 of the agreement.

### 4 Purposes

The arrangements specified in the agreement have been negotiated with the Government of the People's Republic of China for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.

### 5 Arrangements to have effect

The arrangements specified in the agreement have effect according to the tenor of the agreement.

### 6 Revocation

The Double Taxation Relief (China) Order 1986 (SR 1986/314) is revoked on the date referred to in Article 28(1) of the agreement as the date on which the agreement enters into force.

### 7 Transitional provision

Despite clause 6, the Double Taxation Relief (China) Order 1986 continues to apply in New Zealand to any tax that is covered by the agreement until, in respect of that tax, the agreement comes into effect in accordance with Article 28 of the agreement.

## Schedule

### **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**

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

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:

#### **Article 1**

##### **Persons covered**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This Agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9 and Articles 19, 20, 22, 24, 25 and 27.

#### **Article 2**

##### **Taxes covered**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:

- a) in China:
    - (i) the individual income tax;
    - (ii) the enterprise income tax;(hereinafter referred to as “Chinese tax”);
  - b) in New Zealand:
    - (i) the income tax;(hereinafter referred to as “New Zealand tax”).
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their taxation laws.

### **Article 3**

#### **General definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
- a) the term “China” means the People’s Republic of China; when used in geographical sense, means all the territory of the People’s Republic of China, including its land territory, internal water, territorial sea and the air space above them, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People’s Republic of China has sovereign rights or jurisdiction in accordance with international law and its internal law;
  - b) the term “New Zealand” means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
  - c) the term “person” includes an individual, a company and any other body of persons;
  - d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - e) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

- g) 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;
  - h) the term “national”, in relation to a Contracting State, means:
    - (i) any individual possessing the nationality or citizenship of a Contracting State; and
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4**

#### **Resident**

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of incorporation, place of effective management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual’s status shall be determined as follows:
- a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
  - b) if the State in which the individual has their centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
  - c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;

- d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

## **Article 5**

### **Permanent establishment**

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
  - a) a place of management;
  - b) a branch;
  - c) an office;
  - d) a factory;
  - e) a workshop, and
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term “permanent establishment” likewise encompasses:
  - a) a building site, or construction, assembly or installation project, if such site or project lasts more than twelve months;
  - b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any twelve-month period; and
  - c) the carrying on of activities by an enterprise of a Contracting State in the other Contracting State (including the operation of substantial equipment), which consist of, or which are in connection with, the exploration for or exploitation of natural resources, including standing timber, situ-

- ated in that other State, for more than 183 days in any twelve-month period.
4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not listed in subparagraphs a) to d), provided that this activity has a preparatory or auxiliary character; or
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1, 2 and 3 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
- a) in the name of the enterprise, or
  - b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
  - c) for the provision of services by that enterprise,
- that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. a) Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on

business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

- b) For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **Article 6**

### **Income from immovable property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry, or fishing) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include any natural resources, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property, rights to explore for or exploit natural resources or standing timber, and rights to variable or fixed payments as consideration for or in respect of the exploitation of, or the right to explore for or exploit, natural resources or standing timber; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. Any right referred to in paragraph 2 of this Article shall be regarded as situated where the property to which it relates is situated or where the exploration or exploitation may take place.

## **Article 7**

### **Business profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where:

- a) a resident of a Contracting State beneficially owns (whether as a direct beneficiary of a trust or through one or more interposed trusts) a share of the profits of a business of an enterprise carried on in the other Contracting State by the trustee of a trust other than a trust which is treated as a company for tax purposes; and
- b) in relation to that enterprise, that trustee has or would have, if it were a resident of the first-mentioned State, a permanent establishment in the other State,

then the business of the enterprise carried on by the trustee through such permanent establishment shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and the resident's share of profits may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

8. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.
9. Nothing in this Article shall affect any provisions of the laws of either Contracting State at any time in force as they affect the taxation of any income from any form of insurance.

## **Article 8**

### **Shipping and air transport**

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, profits of an enterprise of a Contracting State derived from carriage by ship or aircraft of passengers, live-stock, mail, goods or merchandise which are shipped or embarked in the other Contracting State and are discharged at a place in that other State, or for leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other State.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **Article 9**

### **Associated enterprises**

1. Where:
  - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed 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.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

## **Article 10**

### **Dividends**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
  - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company - which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);
  - b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends holds, together with any associated

enterprises directly or indirectly no more than 25 per cent of the voting power in the company paying the dividends, and the beneficial owner is the Government of the other Contracting State. For the purposes of this paragraph, the term “Government of the other Contracting State” shall include:

- a) in the case of China:
    - (i) the China Investment Corporation;
    - (ii) the Silk Road Fund Co., Ltd.;
    - (iii) the National Council for Social Security Fund; and
    - (iv) a statutory body or any entity wholly owned by the Government of China, and performing functions of a governmental nature, as may be agreed from time to time between the competent authorities of the Contracting States;
  - b) in the case of New Zealand:
    - (i) the New Zealand Superannuation Fund;
    - (ii) the Guardians of New Zealand Superannuation;
    - (iii) the Earthquake Commission;
    - (iv) the Accident Compensation Corporation; and
    - (v) a statutory body or any entity wholly owned by the Government of New Zealand, and performing functions of a governmental nature, as may be agreed from time to time between the competent authorities of the Contracting States.
4. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
  5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
  6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s

undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11**

### **Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State and derived and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State provided the beneficial owner of the interest is dealing wholly independently with the payer and is:
  - a) the other Contracting State, including political subdivisions and local authorities thereof;
  - b) the Central Bank of that other Contracting State;
  - c) in the case of China:
    - (i) the China Development Bank;
    - (ii) the Agricultural Development Bank of China;
    - (iii) the Export-Import Bank of China;
    - (iv) the China Export & Credit Insurance Corporation;
    - (v) the China Investment Corporation;
    - (vi) the Silk Road Fund Co., Ltd.;
    - (vii) the National Council for Social Security Fund;
    - (viii) any other institution wholly or mainly owned by the Government of China as may be agreed from time to time between the competent authorities of the Contracting States;
  - d) in the case of New Zealand:
    - (i) the New Zealand Export Credit Office;
    - (ii) the New Zealand Superannuation Fund;
    - (iii) the Guardians of New Zealand Superannuation;
    - (iv) the Earthquake Commission;
    - (v) the Accident Compensation Corporation;

- (vi) any other institution wholly or mainly owned by the Government of New Zealand as may be agreed from time to time between the competent authorities of the Contracting States; or
  - e) any statutory body of a Contracting State performing functions of a governmental nature as may be agreed from time to time between the competent authorities of the Contracting States.
- 4. Notwithstanding the provisions of paragraph 3 of this Article, interest referred to in that paragraph may be taxed in the Contracting State in which it arises at a rate not exceeding 10 percent of the gross amount of the interest if the beneficial owner of the interest:
  - a) is an enterprise named in paragraphs 3c)(i)-(iv) and 3d)(i) that holds directly or indirectly more than 10 per cent of the voting power in the payer of the interest;
  - b) in all other cases, together with any associated enterprises, holds directly or indirectly more than 10 per cent of the voting power in the payer of the interest.
- 5. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as all other income treated as income from money lent by the laws, relating to tax, of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.
- 6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
- 7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by, or deductible in determining the profits attributable to, such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- 8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the inter-

est, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12**

### **Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term “royalties” as used in this Article means payments of any kind received as a consideration for:
  - a) the use of, or the right to use, any copyright, patent, trademark, design or model, plan, secret formula or process, or other like property or right;
  - b) the use of, or the right to use:
    - (i) motion picture films;
    - (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio, internet or other broadcasting;
  - c) the use of, or the right to use, any industrial, scientific or commercial equipment;
  - d) knowledge or information concerning industrial, technical, commercial or scientific experience;
  - e) any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph a) or b), any such equipment as is mentioned in subparagraph c) or any such knowledge or information as is mentioned in subparagraph d);
  - f) giving up, wholly or partly, a right relating to the use or supply of any property or right referred to in this paragraph.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect

of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by, or deductible in determining the profits attributed to, such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

### **Article 13**

#### **Alienation of property**

1. Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Income or gains derived by an enterprise of a Contracting State that operates ships or aircraft in international traffic from the alienation of such ships or aircraft, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent

of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.

5. Income or gains derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the income or gain, at any time during the twelve-month period preceding such alienation, had a participation, directly or indirectly, of at least 25 per cent in the capital of that company.
6. Income or gains from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **Independent personal services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
  - a) if that person has a fixed base regularly available to the person in the other Contracting State for the purpose of performing that person's activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
  - b) if that person's stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable year concerned; in that case, only so much of the income as is derived from that person's activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### **Income from employment**

1. Subject to the provisions of Articles 16, 18, and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable year concerned, and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c) the remuneration is not borne by, or deductible in determining the profits attributable to, a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in that Contracting State.

### **Article 16**

#### **Directors' fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

### **Article 17**

#### **Entertainers and sportspersons**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from such activities as are referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by public or government funds of either Contracting State.

## **Article 18**

### **Pensions**

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to an individual who is a resident of a Contracting State shall be taxable only in that State.

## **Article 19**

### **Government service**

1.
  - a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to the Government of that State or subdivision or authority, shall be taxable only in that State.
  - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
    - (i) is a national of that State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2.
  - a) Pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to the Government of that State or subdivision or authority shall be taxable only in that State.
  - b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of a Contracting State or a political subdivision or local authority thereof.

## **Article 20**

### **Students**

Payments which a student who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of that student's education receives for the purpose of that student's maintenance or education shall not be taxed in that State, provided that such payments arise from sources outside that State.

## **Article 21**

### **Other income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in the other State.

## **Article 22**

### **Elimination of double taxation**

1. In China, in accordance with the provisions of the law of China, double taxation shall be eliminated as follows:
  - a) Where a resident of China derives income from New Zealand, the amount of tax on that income payable in New Zealand in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by New Zealand solely because the income is also income derived by a resident of New Zealand) may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.
  - b) Where the income derived from New Zealand is a dividend paid by a company which is a resident of New Zealand to a company which is a resident of China and which owns not less than 20 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to New Zealand by the company paying the dividend in respect of its income.
2. In New Zealand, double taxation shall be eliminated as follows:

Subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New

Zealand (which shall not affect the general principle of this Article), Chinese tax paid under the laws of China and consistent with this Agreement (except to the extent that these provisions allow taxation by China solely because the income is also income derived by a resident of China), in respect of income derived by a resident of New Zealand from sources in China (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

### **Article 23**

#### **Entitlement to benefits**

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

### **Article 24**

#### **Non-discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in similar circumstances. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State in similar circumstances are or may be subjected.
5. The provisions of the Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **Article 25**

### **Mutual agreement procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which that person is a resident or, if that case comes under paragraph 1 of Article 24, to that of the Contracting State of which that person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of paragraphs 2 and 3. When it seems advisable for reaching an agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

## **Article 26**

### **Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning

- taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
  3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
    - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
    - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
    - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
  4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
  5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## **Article 27**

### **Members of diplomatic missions and consular posts**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

## **Article 28**

### **Entry into force**

1. This Agreement shall enter into force on the thirtieth day following the day on which the two Contracting States have notified each other that the domestic legal procedures for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received.
2. The provisions of this Agreement shall have effect:
  - a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Agreement enters into force;
  - b) in the case of other taxes, for any taxable year beginning on or after the first day of January of the calendar year next following that in which the Agreement enters into force.
3. The Agreement between the Government of the People's Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and the Protocol thereto signed at Wellington on 16 September 1986, as modified by the Protocol signed at Wellington on 7 October 1997 (hereinafter referred to as "the 1986 Agreement") shall cease to have effect with respect to any taxes to which this Agreement applies in accordance with paragraph 2.
4. The 1986 Agreement shall terminate on the last date on which it has effect in accordance with paragraph 3.

## **Article 29**

### **Termination**

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

- a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the notice of termination is given;

- b) in the case of other taxes, for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

The date of receipt of such notice by the other Contracting State shall be definitive for the determination of the deadline (the thirtieth day of June in any calendar year).

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done at Beijing on the 1st day of April, 2019, in duplicate in the Chinese and English languages, both texts being equally authentic.

For the Government of  
New Zealand:  
Clare Fearnley  
New Zealand Ambassador to China

For the Government of the  
People's Republic of China:  
Wang Jun  
Commissioner of the State Taxation  
Administration

## Protocol

At the signing of the Agreement between the Government of the People's Republic of China and the Government of New Zealand for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (hereinafter referred to as "the Agreement"), both sides have agreed upon the following provisions, which shall form an integral part of the Agreement:

1. With reference to Article 5:

For the sole purpose of determining whether the periods referred to in paragraph 3 have been exceeded,

- a) where an enterprise of a Contracting State carries on activities in the other Contracting State referred to in paragraph 3, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the periods referred to in paragraph 3, and
- b) where connected activities are carried on in that other Contracting State in connection with activities identified in paragraph 3 during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities referred to paragraph 3.

"Enterprises closely related to the first-mentioned enterprise" has the meaning given in subparagraph 6 b).

2. With reference to Articles 10, 11 and 12, it is understood that the term "beneficial owner" is not used in a narrow sense (such as the meaning that it has under the trust law of many common law countries).

3. Income arising from guarantee or insurance services provided by:

- a) the China Export & Credit Insurance Corporation shall be taxed only in China;
- b) the New Zealand Export Credit Office shall be taxed only in New Zealand.

4. Notwithstanding the provisions of Article 2 paragraphs 1 and 2, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

5. With regard to Article 10 subparagraph 2 b),

- a) it is understood that New Zealand's supplementary dividend tax credit rules contained in subpart LP of the Income Tax Act 2007 have the effect of reducing the company tax paid by the New Zealand company provided that same amount is then distributed by the New Zealand com-

- pany by way of supplementary dividend to the foreign shareholder in the same taxable year as the payment of the principal dividend. These rules currently only apply to portfolio investment;
- b) it is agreed that should New Zealand repeal or significantly amend the supplementary dividend tax credit rules in subpart LP of the Income Tax Act 2007, the New Zealand Competent Authority shall inform the Chinese Competent Authority of this repeal or amendment with a view to reviewing Article 10.
6. With regard to Article 11,
- a) it is understood that New Zealand's approved issuer levy regime in subpart 6B of the Stamp and Cheque Duties Act 1971 allows interest having a New Zealand source to be paid to a non-resident who is not related to the borrower with no non-resident withholding tax if the borrower makes an election to pay approved issuer levy equal to 2% of the interest;
- b) it is agreed that should New Zealand repeal or significantly amend the approved issuer levy rules, the New Zealand Competent Authority shall inform the Chinese Competent Authority of this repeal or amendment with a view to reviewing Article 11.
7. With regard to Article 24:
- a) The Article shall not apply to any provision of the laws of a Contracting State which:
- (i) is designed to prevent avoidance or evasion of taxes, including:
- (A) measures designed to address thin capitalisation and transfer pricing;
- (B) controlled foreign company and foreign investment fund rules; and
- (C) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures;
- (ii) is of a type which the OECD Model Commentary on Article 24 as it read on 15 July 2014 contemplates not being subject to that Article;
- (iii) is otherwise agreed to be unaffected by Article 24 in an Exchange of Notes between the Contracting State;
- b) With regard to paragraphs 2 and 4, it is understood that the term "in similar circumstances" is intended to clarify, consistent with the OECD Model Commentary as it read on 15 July 2014, that in determining whether Article 24 paragraphs 2 and 4 apply, the permanent establishment or enterprise in question must also be in a similar position to the comparable domestic enterprise in terms of factors such as the legal structure of the enterprise, the size of the enterprise, and the regulatory regime under which they operate.

8. In the Agreement, the term “taxable year” means “income year” in the case of New Zealand.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done at Beijing on the 1st day of April, 2019, in duplicate in the Chinese and English languages, both texts being equally authentic.

For the Government of  
New Zealand:  
Clare Fearnley  
New Zealand Ambassador to China

For the Government of the  
People’s Republic of China:  
Wang Jun  
Commissioner of the State Taxation  
Administration

Michael Webster,  
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, which comes into force on the 28th day after the date of its notification in the *Gazette*, gives effect to the agreement and protocol between the Government of New Zealand and the Government of the People’s Republic of China that were signed in Beijing on 1 April 2019 for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance (the **agreement**).

The agreement will come into force in accordance with Article 28 of the agreement.

The agreement replaces the double tax agreement that is currently in force under the Double Taxation Relief (China) Order 1986, and that order is revoked.

The parties to the agreement will notify each other in writing, through the diplomatic channel, of the completion of their constitutional and legal procedures for the entry into force of the agreement. The date on which the agreement comes into force will be publicised on <http://taxpolicy.ird.govt.nz/tax-treaties/china>

### Regulatory impact assessment

The Inland Revenue Department produced a national interest analysis (which incorporated all elements of a regulatory impact assessment) to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of the national interest analysis can be found—

- appended to the Report of the Finance and Expenditure Committee at [https://www.parliament.nz/en/pb/sc/reports/document/SCR\\_89652/international-treaty-examination-of-the-agreement-between](https://www.parliament.nz/en/pb/sc/reports/document/SCR_89652/international-treaty-examination-of-the-agreement-between)
- on <http://taxpolicy.ird.govt.nz/tax-treaties/china>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 3 October 2019.

This order is administered by the Inland Revenue Department.