Hon Simon Watts, Minister of Revenue

Information Release

Orders in Council for Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria

December 2024

Availability

This information release is available on Inland Revenue's tax policy website at https://taxpolicy.ird.govt.nz/publications/2024/ir-cab-24-sub-0142

Documents in this information release

#	Reference	Type	Title	Date
1	LEG-24-SUB-0142	Paper	Orders in Council for Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria	25 July 2024
2	LEG-24-MIN-0142	Minute	Orders in Council for Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria	25 July 2024
3	CAB-24-MIN-0269	Minute	Report of the Cabinet Legislation Committee: Period Ended 26 July 2024	29 July 2024
4	ERS-22-SUB-0033	Paper	Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria	3 August 2022
5	ERS-22-MIN-0033	Minute	Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria	3 August 2022
6	CAB-22-MIN-0301	Minute	Report of the Cabinet External Relations and Security Committee: Period Ended 5 August 2022	8 August 2022

Additional information

The Cabinet paper for the approval to sign the agreements was considered by Cabinet External Relations and Security Committee on 3 August 2022 and confirmed by Cabinet on 8 August 2022.

Four attachments to this Cabinet paper are not included in this information release as they are publicly available:

- Double Tax Agreements (Slovak Republic) Order 2024
- Double Taxation Relief (Austria) Amendment Order 2024

- National Interest Analysis: Second Protocol to the Agreement between New Zealand and the Republic of Austria
- National Interest Analysis: Double Tax Agreement with the Slovak Republic

The Cabinet paper for Orders in Council was considered by the Cabinet Legislation Committee on 25 July 2024 and confirmed by Cabinet on 29 July 2024.

Information withheld

The only information withheld is information not in scope.

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In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

ORDERS IN COUNCIL FOR DOUBLE TAX AGREEMENT WITH THE SLOVAK REPUBLIC AND AMENDING PROTOCOL WITH AUSTRIA

Proposal

1 This paper seeks the Cabinet Legislation Committee's agreement to submit the accompanying Orders in Council (the *Double Tax Agreement (The Slovak Republic) Order 2024* and the *Double Taxation Relief (Austria) Order 2024* (the Orders)) to the Executive Council.

2 The Orders will incorporate into New Zealand law the following international agreements (the Agreements):

2.1 *Agreement between New Zealand and the Slovak Republic for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance* and its accompanying Protocol (collectively, "the Slovak DTA"); and

2.2 *Second Protocol to the Agreement between New Zealand and the Republic of Austria with respect to Taxes on Income and on Capital* ("the Austrian Protocol").

Policy

3 This paper gives effect to policy decisions made by the Cabinet External Relations and Security Committee on 5 August 2022 (CAB-22-MIN-0301 refers) when it approved the signing of the Slovak DTA and the Austrian Protocol, and the subsequent steps to bring both into force.

4 The Orders giving effect to the Agreements will be made under section BH 1 of the Income Tax Act 2007.

Background

5 Double taxation agreements (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. New Zealand currently has 40 comprehensive DTAs in force.

6 New Zealand does not have an existing DTA with the Slovak Republic. Negotiations on the Slovak DTA began in 2015, at the request of the Slovak Republic. New Zealand agreed to negotiate the DTA for strategic and foreign policy reasons. A key reason is

that the Slovak Republic is a member of the European Union (EU) so the Slovak DTA can help maximise benefits from the EU-NZ Free Trade Agreement.

7 New Zealand has an existing DTA with Austria, signed in 2006. The DTA includes a most favoured nation (MFN) clause, which obliged New Zealand to re-enter negotiations with Austria if it agreed to a withholding tax rate on dividends of less than 15 percent with another OECD member country. The MFN clause was triggered in 2010, when New Zealand's DTAs with the United States and Australia came into force with lower dividend withholding tax rates. New Zealand therefore re-entered negotiations with Austria to honour its treaty obligation in the existing DTA with Austria. The opportunity was also taken in negotiations to update the existing DTA with Austria, including inserting anti-abuse model provisions developed as part of the OECD's Base Erosion and Profit Shifting (BEPS) work.

8 The Slovak DTA was signed on 26 September 2023 and the Austrian Protocol was signed on 12 September 2023. The Agreements have since undergone Parliamentary treaty examination, with the Finance and Expenditure Committee reporting to the House on 21 March 2024, enabling the Agreements to be brought into force.

9 The remaining steps required to bring the Agreements into force are to:

9.1 to make Orders in Council incorporating the Agreements into New Zealand law; and

9.2 to then exchange diplomatic notes with the Slovak Republic and Austria, respectively, confirming the completion of all domestic procedures for entry into force.

Timing and 28-Day Rule

10 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

11 The attached Orders comply with:

11.1 the principles of the Treaty of Waitangi;

11.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions (include a summary of any concerns raised);

11.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

11.4 relevant international standards and obligations;

11.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

12 The Order generally complies with principles and guidelines set out in the Privacy Act 2020. However, as is the case for all DTAs, the information-exchange provisions

require an override of the Privacy Act 2020 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.

Regulations Review Committee

13 I am not aware of any grounds on which the Regulations Review Committee might draw the Order to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

14 The Parliamentary Counsel Office (PCO) has certified that the Order in Council is in order for submission to Cabinet.

Impact Analysis

15 As this proposal has regulatory implications Cabinet's Impact Analysis Requirements apply. However, as the Orders implement international treaties for which extended National Interest Analyses (NIA) have previously been prepared and considered by Cabinet, separate Regulatory Impact Assessments are not required.

16 The Quality Assurance reviewer at Inland Revenue has reviewed the below extended NIAs prepared by Inland Revenue and considers that the information and analysis summarised in the NIAs **meet** the quality assurance criteria:

16.1 *National interest analysis: Double Tax Agreement with the Slovak Republic*; and

16.2 National interest analysis: Second Protocol to the Agreement between New Zealand and the Republic of Austria with respect to Taxes on Income and on Capital

17 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Consultation

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

Communications

19 The new Orders will be notified in the *New Zealand Gazette*.

20 Inland Revenue will publish an article about these changes in its *Tax Information Bulletin*.

Proactive Release

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

Recommendations

I recommend that the Committee:

1 **Note** that on 5 August 2022 the Cabinet External Relations and Security Committee agreed to the signing of the:

- *Agreement between New Zealand and the Slovak Republic for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance* and its accompanying Protocol; and the

- *Second Protocol to the Agreement between New Zealand and the Republic of Austria with respect to Taxes on Income and on Capital* and the undertaking of the steps required to bring them into force (CAB-22-MIN-0301 refers).

2 **Note** that the Double Tax Agreement (The Slovak Republic) Order 2024 and the Double Taxation Relief (Austria) Order 2024 will incorporate the Agreements into New Zealand law pursuant to section BH 1 of the Income Tax Act 2007.

3 **Note** that, subject to successful promulgation of the Orders, the Agreements will be brought into force through an exchange of diplomatic notes with the Slovak Republic and Austria.

4 **Authorise** the submission to the Executive Council of the attached Orders.

Authorised for lodgement

Hon Simon Watts

Minister of Revenue

LEG-24-MIN-0142

Cabinet Legislation Committee

Minute of Decision

Orders in Council for Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria

Portfolio **Revenue**

On 25 July 2024, the Cabinet Legislation Committee:

1 **noted** that in August 2022, the previous government agreed to the signing of the:

1.1 Agreement between New Zealand and the Slovak Republic for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance and its accompanying Protocol; and the

1.2 Second Protocol to the Agreement between New Zealand and the Republic of Austria with respect to Taxes on Income and on Capital (the Agreements) and the undertaking of the steps required to bring them into force;

[ERS-22-MIN-0033]

2 **noted** that the Double Tax Agreement (Slovak Republic) Order 2024 [PCO 26507/5.0] and the Double Taxation Relief (Austria) Order 2024 [PCO 26506/4.0] (the Orders) will incorporate the Agreements into New Zealand law pursuant to section BH 1 of the Income Tax Act 2007;

3 **noted** that, subject to successful promulgation of the Orders, the Agreements will be brought into force through an exchange of diplomatic notes with the Slovak Republic and Austria;

4 **authorised** the submission to the Executive Council of the Orders.

Vivien Meek
Committee Secretary

Attendance (see over)

Present:
Hon Simeon Brown (Chair)
Hon Paul Goldsmith
Hon Tama Potaka
Hon Simon Watts
Hon Brooke van Velden
Hon Nicole McKee
Hon Casey Costello
Hon Chris Penk
Hon Penny Simmonds
Hon Andrew Bayly
Hon Scott Simpson
Todd Stevenson, MP
Jamie Arbuckle, MP

Officials present from:
Officials Committee for LEG

Cabinet

Minute of Decision

Report of the Cabinet Legislation Committee: Period Ended 26 July 2024

On 29 July 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 24 July 2024:

Not in scope

LEG-24-MIN-0142	**Orders in Council for Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria** Portfolio: Revenue	CONFIRMED

Not in scope

Rachel Hayward
Secretary of the Cabinet

Office of the Minister of Revenue

Chair, Cabinet External Relations and Security Committee

DOUBLE TAX AGREEMENT WITH THE SLOVAK REPUBLIC AND AMENDING PROTOCOL WITH AUSTRIA

Proposal

1. This paper proposes that Cabinet authorise the signing, and the steps necessary to bring into force, the following international agreements:

   1.1 *Agreement between New Zealand and the Slovak Republic for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance* and its accompanying Protocol (collectively, "the Slovak DTA"). The text of the Slovak DTA is attached as **Annex I**.

   1.2 *Second Protocol to the Agreement between New Zealand and the Republic of Austria with respect to Taxes on Income and on Capital* ("the Austrian Protocol"). The text of the Austrian Protocol is attached as **Annex II**.

Relation to Government Priorities

2. The treaties referred to in this paper would promote Government priorities by maintaining our international reputation.

3. In addition, both treaties contain anti-abuse and enforcement measures required or recommended by the Organisation for Economic Co-Operation and Development (OECD), which will strengthen New Zealand's ability to counter treaty abuse and protect its tax base.

Executive Summary

4. Officials have concluded negotiations with the Slovak Republic for a new double tax agreement (DTA) and with Austria for a Second Protocol to amend the existing *Agreement between New Zealand and the Republic of Austria with respect to taxes on income and on capital* and its accompanying first Protocol (collectively, "the Existing Austrian DTA").

5. Generally, the purpose of a DTA is to reduce tax impediments to cross-border services, trade and investment without creating opportunities for tax avoidance or evasion. DTAs also enable tax administrations to assist each other in detecting and preventing tax avoidance and evasion, and in enforcing their tax laws.

The Slovak DTA

6. New Zealand was able to secure all of its key negotiating positions in the Slovak DTA. The Slovak DTA also includes all of the major anti-abuse model provisions developed as part of the OECD's Base Erosion and Profit Shifting (BEPS) work. The Slovak DTA therefore represents a good precedent for New Zealand in future negotiations with other countries.

7. The reason we prioritised the Slovak DTA was because New Zealand was negotiating a Free Trade Agreement (FTA) with the European Union (EU). DTAs tend to maximise the benefits of FTAs. New Zealand currently has DTAs with 13 of the 27 EU member countries, and the Slovak DTA is one of several being progressed with the other 14 members. While trade and investment with the Slovak Republic historically have not been high, trade has increased in recent years and there is potential for future growth in cross-border activity once the Slovak DTA is in force.

The Austrian Protocol

8. New Zealand signed the Existing Austrian DTA in 2006. The DTA includes a most favoured nation (MFN) clause, which obliged New Zealand to re-enter negotiations with Austria if it agreed to a withholding tax rate on dividends of less than 15 percent with another OECD member country. The MFN clause was triggered in 2010, when New Zealand's DTAs with the United States and Australia came into force. Both the United States and Australia DTAs provide for dividend withholding rates of 15, 5 or 0 percent depending on the conditions met. New Zealand re-entered negotiations with Austria to honour this prior treaty commitment, and the Austrian Protocol also provides for dividend withholding rates of 15, 5 or 0 percent depending on the conditions.

9. The opportunity was also taken in those negotiations to update the Existing Austrian DTA in several respects. The most important update was to insert a package of BEPS anti-abuse provisions developed after the Existing Austrian DTA was negotiated.

Approvals sought

10. This paper seeks Cabinet's approval for both the Slovak DTA and the Austrian Protocol to be signed.

11. It also seeks approval of the two extended national interest analyses (NIAs) prepared in respect of both agreements. The extended NIAs will be required when the agreements are submitted for parliamentary treaty examination under Standing Order 405 of the House of Representatives. The extended NIA for the Slovak DTA is attached as **Annex III** while the extended NIA for the Austrian Protocol is attached as **Annex IV**.

12. Finally, approval is also sought for the necessary steps to be taken to bring the two agreements into force after they have been signed. This will involve:

12.1 tabling the two agreements in the House of Representatives, with their accompanying NIAs, for parliamentary treaty examination;

12.2 making two Orders in Council to incorporate the agreements into domestic law; and

12.3 bringing the two agreements into force through exchanges of diplomatic notes with the Slovak Republic and Austria.

Background

13. DTAs are bilateral treaties that are principally designed to promote economic ties between countries by reducing tax impediments to cross-border trade and investment. More specifically, DTAs provide greater certainty of tax treatment, share the cost of relieving double taxation, limit withholding tax rates on dividends, interest, and royalties, and exempt certain short-term activities from taxation in the state where those activities take place (the “source state”). They also enable the tax administrations of the treaty countries to assist each other in the detection and prevention of tax avoidance and evasion by establishing a mechanism for exchanging information between the tax authorities of the treaty countries. New Zealand currently has 40 bilateral DTAs in force.

Comment

The Slovak DTA

14. New Zealand does not have an existing DTA with the Slovak Republic. Negotiations on the Slovak DTA began in 2015, at the request of the Slovak Republic. New Zealand agreed to negotiate the DTA for strategic and foreign policy reasons. A key reason is that the Slovak Republic is a member of the EU and so the Slovak DTA can help maximise benefits from the EU-NZ FTA.

15. The Slovak DTA is a good outcome for New Zealand, with all our key negotiating objectives and all the key BEPS anti-abuse provisions secured. We were able to agree a DTA text that closely matches New Zealand’s negotiating model for tax treaties, which is based on the OECD Model Tax Convention on Income and on Capital (“OECD Model”), with certain modifications. Those modifications mainly seek to strengthen source taxation, which is generally in New Zealand’s interests as a net importer of foreign capital. The Slovak DTA represents a good precedent for New Zealand in future DTA negotiations with other countries.

16. One way in which the Slovak DTA departs from New Zealand's negotiating model is that it exempts interest earned by certain government entities. The exemption is reciprocal, so it applies to New Zealand government entities as well as Slovak ones. New Zealand has agreed to similar exemptions before with Canada, Japan, Hong Kong, Singapore, Australia and others. The exemption is limited to passive investment where the government entity holds less than 10 percent of the shares in the borrower, consistent with New Zealand's DTA policy. This ensures that the exemption is not available where the government owns an active business, so the government entity cannot strip profits out of New Zealand using exempt interest payments.

17. The full text of the Slovak DTA is attached as **Annex I** and the extended NIA is attached as **Annex III**. The key features of the Slovak DTA are set out in the extended NIA.

The Austrian Protocol

18. New Zealand has an existing DTA with Austria, signed in 2006. The Existing Austrian DTA provides for a 15 percent withholding tax rate on dividends, consistent with New Zealand's negotiating model at the time. To secure that 15 percent rate, New Zealand agreed to include an MFN clause, which obliged us to re-enter negotiations with Austria if we agreed to a lower withholding rate with another OECD member country.

19. The MFN clause was triggered in 2010, when New Zealand's DTAs with Australia and the United States came into force. New Zealand therefore re-entered negotiations with Austria to honour its treaty obligation in the Existing Austrian DTA. The main feature of the Austrian Protocol is that it lowers the dividend withholding rate from 15 percent to 5 or 0 percent if certain conditions are met (as with the United States and Australia DTAs). This is not as significant a change as it may first appear, as New Zealand's domestic withholding rate for most dividends is already 0 percent, if they are paid out of fully taxed company profits (that is, if they are "fully imputed"). The lower withholding rate in the Austrian Protocol will therefore only affect *unimputed* dividends (for example, dividends paid out of untaxed capital gains).

20. The opportunity was also taken in negotiations to update the Existing Austrian DTA in several respects, the most important of which was to insert a package of BEPS anti-abuse provisions. The international BEPS initiative was led by the OECD and G20, starting in 2013. It resulted in model treaty provisions that were included in the OECD and United Nations Model Tax Conventions (on which almost all DTAs worldwide are based) in 2017. Some of these model provisions constitute "minimum standards" that all members of the BEPS Inclusive Framework (including New Zealand) are required to include in their DTAs. Other provisions are "best practice" provisions that members may choose whether to adopt. The implementation of the minimum standard provisions in DTAs is being monitored and assessed through an OECD-led international peer review process. Including BEPs provisions in New Zealand's DTAs is expected to benefit New Zealand generally, as such provisions reduce the ability for taxpayers to use DTAs to facilitate tax avoidance or evasion.

21. To make it easier for countries to include the new BEPS provisions in their existing DTAs without bilateral negotiations, the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the Multilateral Instrument, or MLI) was developed. When two parties to an existing bilateral DTA sign the MLI and both list the DTA to be covered by the MLI, the DTA will be updated to include the BEPS model treaty provisions.

22. New Zealand nominated the Existing Austrian DTA to be covered by the MLI, but Austria did not, preferring to include the BEPS provisions through bilateral negotiations because of the MFN obligation in the DTA. The Austrian Protocol therefore also includes the BEPS minimum standards and some of the best practice provisions.

23. The full text of the Austrian Protocol is attached as **Annex II** and the extended NIA is attached as **Annex IV**. The key features of the Austrian Protocol are set out in the extended NIA.

Next steps

24. It is proposed that the Slovak DTA and Austrian Protocol be signed, likely by the Heads of Mission in capitals on a date agreed by the two parties.

25. This paper also seeks approval for the necessary steps to be taken to bring each protocol into force after it has been signed. This will involve:

   25.1 *Parliamentary treaty examination*. Pursuant to previous Cabinet decisions as to the application of Standing Order 405 to DTAs, all DTAs and protocols that amend DTAs must undergo parliamentary treaty examination. Each agreement and its associated extended NIA will therefore need to be presented in the House for consideration by Select Committee.

   25.2 *An Order in Council*. After treaty examination is complete, and pursuant to section BH 1 of the Income Tax Act 2007, each agreement will be given the force of law in New Zealand by Order in Council.

   25.3 *Exchange of diplomatic notes*. After completing the previous steps, and pursuant to requirements set out in the Entry into Force Article of each agreement, diplomatic notes will be exchanged with the Slovak Republic and Austria. This will bring each agreement into force.

Financial Implications

26. Data limitations prevent officials from estimating the revenue costs of entering DTAs with any degree of precision. In general, DTAs constrain New Zealand's ability to tax certain income and can therefore be expected to result in some reduction of New Zealand tax. However, DTAs are reciprocal in nature so there is also expected to be an offsetting increase in New Zealand tax. This is because, under domestic law, New Zealand tax residents usually receive a foreign tax credit for tax paid overseas, even in the absence of a DTA. Since a DTA also constrains the other country's ability to tax certain income, it can reduce the foreign tax credits given by New Zealand and therefore increase the amount of New Zealand tax revenue.

27. A DTA therefore shares the costs of alleviating double taxation between the two countries in accordance with commonly accepted international tax principles. In a DTA between countries with reciprocal levels of trade and investment, the offsets are expected to be broadly equal over time.

The Slovak DTA

28. The Slovak DTA is not expected to have a fiscal cost.

29. Given the limited existing trade and investment flows between the Slovak Republic and New Zealand, any reduction of New Zealand tax as a result of the DTA is expected to be negligible. The reductions are also likely to be offset by potential revenue gains from increased cross-border trade and investment, and reduced tax evasion and avoidance resulting from the exchange of information provisions in the Slovak DTA.

The Austrian Protocol

30. For the Austrian Protocol, there is some risk of a reduction in New Zealand tax.

31. As noted above, in a DTA between countries with reciprocal levels of trade and investment, the revenue impact is expected to be broadly neutral over time. Currently, there is no material investment in Austria from New Zealand but there is one material direct investment in the New Zealand oil and gas sector from Austria.

32. Despite this imbalance, there is not expected to be a fiscal cost to New Zealand from reducing the dividend withholding rate as the reduction will only affect unimputed dividends. Unimputed dividends are not expected to arise as untaxed capital gains are rare in the oil and gas sector. This is explained further in the extended NIA.

33. Certain other changes made by the Austrian Protocol could also increase slightly the administrative costs of the New Zealand Government. However, these costs are expected to be minor and no increase of baseline funding will be sought.

Legislative Implications

34. As is usual practice for DTAs, the Slovak DTA and the Austrian Protocol will be given effect by Orders in Council under the Income Tax Act 2007. The Slovak DTA and Austrian Protocol will then override specified domestic legislation (the Inland Revenue Acts, the Official Information Act 1982, and the Privacy Act 1993). The override only applies in respect of tax and is subject to certain exceptions (for example, DTAs will not override the general anti-avoidance rule in the Income Tax Act).

35. Each Order in Council will be submitted to Cabinet following the signing of the new DTA and the successful completion of the parliamentary treaty examination process.

Impact Analysis

Regulatory Impact Assessment

36. As these proposals have regulatory implications (they will require Orders in Council), Cabinet's Impact Analysis Requirements apply. However, as this paper relates to international treaties for which extended NIAs have been prepared (see Annexes III and IV), a separate Regulatory Impact Assessment is not required.

37. The Quality Assurance reviewers at Inland Revenue have reviewed the following extended NIAs prepared by Inland Revenue and consider that the information and analysis summarised in both NIAs **meet** the quality assurance criteria:

    37.1 *National Interest Analysis: Double Tax Agreement with the Slovak Republic*; and

    37.2 *National Interest Analysis: Second Protocol to the Agreement between New Zealand and the Republic of Austria with respect to Taxes on Income and on Capital*.

Climate Implications of Policy Assessment

38. We note that the Austrian Protocol could benefit an Austrian investment into the oil and gas sector in New Zealand, to the extent that it has any unimputed dividends. Given the Government's current commitment to reduce New Zealand's greenhouse gas emissions, this could be perceived as a disadvantage. However, the Austrian Protocol (and tax treaties generally) does not give entities in any sector advantages that are not available generally. For this reason, the Austrian Protocol does not give any preferential treatment to the oil and gas sector.

39. The Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

40. Neither the Slovak DTA nor the Austrian Protocol are expected to have any impact on Māori, children, seniors, disabled people, women, people who are gender diverse, Pacific peoples, veterans, rural communities, or ethnic communities.

Human Rights

41. No inconsistencies with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993 have been identified.

Consultation

42. The Minister of Finance, Ministry of Foreign Affairs and Trade and Ministry for the Environment were consulted in the preparation of this Cabinet paper. The NIAs were prepared by Inland Revenue, who consulted the Ministry of Foreign Affairs and Trade and the Treasury in its preparation.

43. No specific private sector consultation was undertaken for the Slovak DTA. Consistent with international practice, officials generally do not consult on the content of tax treaties as New Zealand, like most jurisdictions, does not make its treaty negotiating model public.

44. There has been consultation initiated by a significant Austrian investor on its investment in the New Zealand oil and gas sector, which included discussion of the Austrian Protocol. This is in line with the existing practice of stakeholders being able to raise issues with New Zealand's existing DTAs as they arise.

Communications

45. The texts of the Slovak DTA and the Austrian Protocol will be made available on Inland Revenue's tax policy website after they have been signed. The extended NIAs will be publicly available on the Parliament website following parliamentary treaty examination. Appropriate media statements and announcements will be made at key steps during the entry into force process.

Proactive Release

46. I propose to delay the proactive release of this Cabinet paper, associated minutes, and key advice papers in whole until the appropriate signatures have been obtained, and the Slovak Republic and Austria have agreed to the release. The release will be subject to redaction as appropriate under the Official Information Act 1984.

Recommendations

The Minister of Revenue recommends that the Cabinet Committee:

1. **note** that officials have negotiated:

   1.1 *Agreement between New Zealand and the Slovak Republic for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance* and its accompanying Protocol (collectively, "the Slovak DTA"), attached as **Annex I**.

   1.2 *Second Protocol to the Agreement between New Zealand and the Republic of Austria with respect to Taxes on Income and on Capital* ("the Austrian Protocol"), attached as **Annex II**.

2. **approve** the text of the Slovak DTA, subject to any minor or technical changes arising from the process of legal verification;

3. **approve** the text of the Austrian Protocol, subject to any minor or technical changes arising from the process of legal verification;

4. **agree** that New Zealand sign the Slovak DTA;

5. **agree** that New Zealand sign the Austrian Protocol;

6. **approve** the extended National Interest Analyses (NIAs) prepared in relation to the Slovak DTA, attached as **Annex III**;

7. **approve** the extended National Interest Analyses (NIAs) prepared in relation to the Austrian Protocol, attached as **Annex IV**;

8. **note** that, following signature, the texts of the Slovak DTA, the Austrian Protocol, and their accompanying extended NIAs will be presented to the House of Representatives for parliamentary treaty examination, in accordance with Standing Order 405;

9. **note** that, if approved, the Slovak DTA and the Austrian Protocol will each be incorporated into New Zealand domestic law through an Order in Council, pursuant to section BH 1 of the Income Tax Act 2007;

10. **invite** the Minister of Revenue to instruct the Parliamentary Counsel Office to draft the Order in Council to give effect to the Slovak DTA;

11. **invite** the Minister of Revenue to instruct the Parliamentary Counsel Office to draft the Order in Council to give effect to the Austrian Protocol;

12. **note** that, following the signing and satisfactory completion of parliamentary treaty examination, the Orders in Council will be submitted to Cabinet for approval;

13. **authorise** officials, following signature, satisfactory completion of parliamentary treaty examination and promulgation of the Orders in Council, to bring the Slovak DTA into force by exchanging diplomatic notes with the Slovak Republic;

14. **authorise** officials, following signature, satisfactory completion of parliamentary treaty examination and promulgation of the Orders in Council, to bring the Austrian Protocol into force by exchanging diplomatic notes with Austria.

Authorised for lodgement

Hon David Parker
Minister of Revenue

Cabinet External Relations and Security Committee

Minute of Decision

Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria

Portfolio Revenue

On 3 August 2022, the Cabinet External Relations and Security Committee:

1 **noted** that officials have negotiated the following agreements:

1.1 *Agreement between New Zealand and the Slovak Republic for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance* and its accompanying Protocol (collectively, the Slovak DTA), attached as Annex I to the paper under ERS-22-SUB-0033;

1.2 *Second Protocol to the Agreement between New Zealand and the Republic of Austria with Respect to Taxes on Income and on Capital* (the Austrian Protocol), attached as Annex II to the paper under ERS-22-SUB-0033;

2 **approved** the text of:

2.1 the Slovak DTA, subject to any minor or technical changes arising from the process of legal verification;

2.2 the Austrian Protocol, subject to any minor or technical changes arising from the process of legal verification;

3 **agreed** that New Zealand sign:

3.1 the Slovak DTA;

3.2 the Austrian Protocol;

4 **approved** the extended National Interest Analysis (NIA) prepared in relation to the Slovak DTA, attached as Annex III to the paper under ERS-22-SUB-0033;

5 **approved** the extended NIA prepared in relation to the Austrian Protocol, attached as Annex IV to the paper under ERS-22-SUB-0033;

6 **noted** that, following signature, the texts of the Slovak DTA, the Austrian Protocol, and their accompanying extended NIAs, will be presented to the House of Representatives for parliamentary treaty examination, in accordance with Standing Order 405;

7 **noted** that the Slovak DTA and the Austrian Protocol will each be incorporated into New Zealand domestic law through an Order in Council, pursuant to section BH1 of the Income Tax Act 2007;

8 **invited** the Minister of Revenue to issue drafting instructions to the Parliamentary Counsel Office to draft the Order in Council to give effect to:

8.1 the Slovak DTA;

8.2 the Austrian Protocol;

9 **noted** that, following the signing and satisfactory completion of parliamentary treaty examination, the Orders in Council will be submitted to Cabinet for approval;

10 **authorised** officials, following signature, satisfactory completion of parliamentary treaty examination, and promulgation of the Orders in Council, to bring:

10.1 the Slovak DTA into force by exchanging diplomatic notes with the Slovak Republic;

10.2 the Austrian Protocol into force by exchanging diplomatic notes with Austria.

Janine Harvey
Committee Secretary

Present:
Rt Hon Jacinda Ardern (Chair)
Hon Kelvin Davis
Hon Chris Hipkins
Hon Andrew Little
Hon David Parker
Hon Damien O'Connor
Hon Peeni Henare
Hon Michael Wood
Hon Dr David Clark
Hon Kieran McAnulty

Officials present from:
Office of the Prime Minister
Officials Committee for ERS

Cabinet

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.

Report of the Cabinet External Relations and Security Committee: Period Ended 5 August 2022

On 8 August 2022, Cabinet made the following decisions on the work of the Cabinet External Relations and Security Committee for the period ended 5 August 2022:

Not in scope

ERS-22-MIN-0033	**Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria** Portfolio: Revenue	CONFIRMED

Not in scope

Not in scope