Proactive Release

Published on or before: 7 October 2024

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister of Foreign Affairs

Title	Reference
Report of the Cabinet Foreign Policy and National Security Committee: Period Ended 23 August 2024	CAB-24-MIN-0312
Cabinet Foreign Policy and National Security Committee – Minute of Decision – Approval to Sign Double Tax Agreement with Slovenia	FPS-24-MIN-0021
Approval to Sign Double Tax with Slovenia	

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

Key to OIA redaction codes:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government; and,
- 6(b)(i): to protect the passing of information from another government on a confidential basis.

CAB-24-MIN-0312

Cabinet

Minute of Decision

Report of the Cabinet Foreign Policy and National Security Committee: Period Ended 23 August 2024

On 26 August 2024, Cabinet made the following decisions on the work of the Cabinet Foreign Policy and National Security Committee for the period ended 23 August 2024

FPS-24-MIN-0021	**Approval to Sign Double Tax Agreement with Slovenia** Portfolios: Foreign Affairs / Revenue	CONFIRMED

Rachel Hayward
Secretary of the Cabinet

Cabinet Foreign Policy and National Security Committee

Minute of Decision

Approval to Sign Double Tax Agreement with Slovenia

Portfolios **Foreign Affairs / Revenue**

On 20 August 2024, the Cabinet Foreign Policy and National Security Committee:

1 **noted** that officials have negotiated the Agreement between New Zealand and the Republic of Slovenia 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 Slovenian DTA"), attached as Annex I to the submission under FPS-24-SUB-0021;

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

3 **agreed** that New Zealand sign the Slovenian DTA;

4 **approved** the extended National Interest Analysis (NIA) prepared in relation to the Slovenian DTA, attached as Annex II to the submission under FPS-24-SUB-0021;

5 **noted** that, following signature, the text of the Slovenian DTA and its accompanying extended NIA will be presented to the House of Representatives for Parliamentary treaty examination, in accordance with Standing Order 405;

6 **invited** the Minister of Revenue to instruct the Parliamentary Counsel Office to draft the Order in Council to give effect to the Slovenian DTA;

7 **noted** that, following the signing and satisfactory completion of Parliamentary treaty examination, the Order in Council will be presented to the Cabinet Legislation Committee for submission to the Executive Council for approval;

8 **noted** that, if the Order in Council is made, the Slovenian DTA will be incorporated into New Zealand domestic law, pursuant to section BH 1 of the Income Tax Act 2007;

9 **authorised** officials, following the signature, satisfactory completion of Parliamentary treaty examination and promulgation of the Order in Council, to bring the Slovenian DTA into force by exchanging diplomatic notes with Slovenia.

Jenny Vickers
Committee Secretary

Attendance: (see over)

Present:
Rt Hon Christopher Luxon
Rt Hon Winston Peters (Chair)
Hon David Seymour
Hon Nicola Willis
Hon Judith Collins
Hon Mark Mitchell
Hon Nicola Grigg

Officials present from:
Office of the Prime Minister
Officials Committee for FPS
Office of the Chair of FPS

Please note the next 52 pages are withheld under section 6(a) and 6(b)(i)

Sensitive

Office of the Minister of Foreign Affairs

Office of the Minister of Revenue

Chair, Cabinet Foreign Policy and National Security Committee

APPROVAL TO SIGN DOUBLE TAX AGREEMENT WITH SLOVENIA

Proposal

1 This paper requests that Cabinet authorise the signing, and the steps necessary to bring into force, the *Agreement between New Zealand and the Republic of Slovenia 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 Slovenian DTA"). The text of the Slovenian DTA is attached as an **Annex I**.

Relation to Government Priorities

2 The Slovenian DTA would promote Government priorities by maintaining our international reputation and supporting the growth of international trade.

Executive Summary

3 Officials have concluded negotiations with Slovenia for a new double tax agreement (DTA).

4 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.

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

6 The reason we prioritised the Slovenian DTA was to strengthen our treaty network with other OECD member states and to complement the Free Trade Agreement (FTA) we were negotiating with the European Union (EU). New Zealand is subject to an express recommendation issued by the OECD Council for member countries to pursue efforts to conclude DTAs with other OECD member countries. DTAs also help to maximise the benefits of FTAs. New Zealand currently has DTAs, or has concluded negotiations, with 14 of the 27 EU member states. The Slovenian DTA is one of several being progressed with the other 13 members.

7 While trade and investment with Slovenia has not historically been high, there is potential for future growth in cross-border activity with both the Slovenian DTA and the New Zealand-EU FTA in force.

8 This paper seeks Cabinet's approval for the Slovenian DTA to be signed.

9 It also seeks the approval of the national interest analysis (NIA) prepared in respect of this agreement. The extended NIA will be attached when the agreement is submitted for parliamentary treaty examination under Standing Order 405 of the House of Representatives. The extended NIA is attached as **Annex II**.

10 Finally, approval is also sought for the necessary steps to be taken to bring the agreement into force after it has been signed, as described in paragraph 16.

Background

11 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 is also party to the Multilateral Convention on Mutal Administrative Assistance in Tax Matters which gives similar information exchange abilities). New Zealand currently has 40 bilateral DTAs in force.

Analysis

12 New Zealand does not have an existing DTA with Slovenia. Negotiations on the Slovenian DTA began in 2020, at the request of Slovenia. New Zealand agreed to negotiate the DTA for strategic and foreign policy reasons. A key reason is that Slovenia is a member of the EU, so the Slovenian DTA can help maximise the benefits from the New Zealand-EU FTA. New Zealand is also subject to an express recommendation issued by the OECD Council for member countries to pursue efforts to conclude DTAs with other OECD member countries (such as Slovenia).

13 The Slovenian DTA represents a good outcome for New Zealand as both jurisdictions favour a greater focus on source taxation (as opposed to residence taxation). As a result, New Zealand was able to secure agreement on important negotiating positions. The Slovenian DTA also includes all of the key base erosion and profit shifting model anti-abuse provisions.

14 One key way in which the Slovenian DTA departs from New Zealand's negotiating model is that it exempts interest earned by certain government entities from tax. The exemption is reciprocal, so it applies to New Zealand government entities as well as Slovenian 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.

15 The full text of the Slovenian DTA is attached as **Annex I** and the extended NIA is attached as **Annex II**. The key features of the Slovenian DTA are set out in the extended NIA.

Next steps

16 The next step will be to sign the Slovenian DTA, likely by the Heads of Mission in capitals on a date agreed by New Zealand and Slovenia.

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

17.1 *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. The Slovenian DTA and its extended NIA will therefore need to be presented in the House for consideration by Select Committee.

17.2 *An Order in Council*. After treaty examination is complete, an Order in Council will be drafted and presented to the Cabinet Legislation Committee for submission to the Executive Council. Passing the Order in Council would give the DTA the force of law in New Zealand, pursuant to section BH 1 of the Income Tax Act 2007.

17.3 *Exchange of diplomatic notes*. After completing the previous steps, and pursuant to requirements set out in the Entry into Force Article of the Slovenian DTA, diplomatic notes will be exchanged with Slovenia. This will bring the agreement into force.

Financial Implications

18 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 in some circumstances. 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.

19 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.

20 Given the limited existing trade and investment flows between Slovenia 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 Slovenian DTA. Therefore, the Slovenian DTA is not expected to have a fiscal cost.

Legislative Implications

21 As is usual practice for DTAs, the Slovenian DTA will be given effect by an Order in Council under the Income Tax Act 2007. The Slovenian DTA 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, the DTA will not override the general anti-avoidance rule in the Income Tax Act).

22 The 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

23 The Treasury's Regulatory Impact Analysis team has determined that this proposal for a DTA between Slovenia and New Zealand is exempt from the requirement to provide a Regulatory Impact Statement (RIS) on the grounds that it would substantively duplicate the extended NIA (see Annex II). This exemption is granted on the condition that the NIA contains all the requirements that would otherwise be included in the RIS. The internal panel at Inland Revenue has reviewed the document and confirmed that it contains these requirements.

24 The Quality Assurance reviewer at Inland Revenue has reviewed the extended NIA *National Interest Analysis Double Tax Agreement with the Republic of Slovenia* prepared by Inland Revenue and considers that the information and analysis summarised in the NIA **meets** the quality assurance criteria.

Climate Implications of Policy Assessment

25 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal as it not expected to result in any significant, direct emissions impacts.

Population Implications

26 The Slovenian DTA is not expected to have any impact on Māori, children, seniors, disabled people, women, people who are gender diverse, Pacific peoples, veterans, rural communities, and ethnic communities.

Human Rights

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

Consultation

28 The Treasury was consulted in the preparation of this Cabinet paper. The Department of Prime Minister and Cabinet was informed.

29 The NIA was prepared by Inland Revenue, who consulted the Treasury and the Ministry of Foreign Affairs and Trade in its preparation.

30 No specific private sector consultation was undertaken for the Slovenian 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.

Communications

31 The text of the Slovenian DTA will be made available on Inland Revenue's tax policy website after the treaty has been signed. The extended NIA 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, including signature.

Proactive Release

32 We 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 Slovenia has agreed to the release. The release will be subject to redaction as appropriate under the Official Information Act 1984.

Recommendations

The Minister of Foreign Affairs and the Minister of Revenue recommend that the Committee:

1 **note** that officials have negotiated the *Agreement between New Zealand and the Republic of Slovenia 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 Slovenian DTA"), attached as **Annex I**.

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

3 **agree** that New Zealand sign the Slovenian DTA;

4 **approve** the extended National Interest Analysis (NIA) prepared in relation to the Slovenian DTA, attached as **Annex II**;

5 **note** that, following signature, the text of the Slovenian DTA and its accompanying extended NIA will be presented to the House of Representatives for parliamentary treaty examination, in accordance with Standing Order 405;

6 **invite** the Minister of Revenue to instruct the Parliamentary Counsel Office to draft the Order in Council to give effect to the Slovenian DTA;

7 **note** that, following the signing and satisfactory completion of parliamentary treaty examination, the Order in Council will be presented to the Cabinet Legislation Committee for submission to the Executive Council for approval;

8 **note** that, if the Order in Council is made, the Slovenian DTA will be incorporated into New Zealand domestic law, pursuant to section BH 1 of the Income Tax Act 2007;

9 **authorise** officials, following signature, satisfactory completion of parliamentary treaty examination and promulgation of the Order in Council, to bring the Slovenian DTA into force by exchanging diplomatic notes with Slovenia.

Authorised for lodgement

Rt Hon Winston Peters

Minister of Foreign Affairs

Hon Simon Watts

Minister of Revenue