

## China signs revised income tax treaty with New Zealand

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### Executive summary

On 1 April 2019, representatives of China and New Zealand signed a revised income tax treaty (the Revised Treaty) and protocol (Protocol) which will replace the existing 1986 treaty.

The Revised Treaty is aimed at further promoting investment and economic activities between China and New Zealand. It eliminates barriers for cross-border collaboration and offers various opportunities for both countries. The revisions are also meant to align the Revised Treaty with the OECD<sup>1</sup> as well as with the recommendations in the OECD's final reports in its Action Plan on BEPS.<sup>2</sup>

Significant provisions in the Revised Treaty include the following:

- ▶ Introduction of a fiscally transparent entity/arrangement concept
- ▶ Tie-breaker rule for a treaty residency determination of non-individual dual resident persons
- ▶ Expanded scope of permanent establishment
- ▶ Reduced withholding tax on dividend
- ▶ Principal purpose test for the entitlement of benefits

The Revised Treaty and Protocol will enter into force 30 days following the exchange of ratification instruments. The provisions of the Revised Treaty and Protocol will become effective as of 1 January of the year following entry into force.

This Alert summarizes the key provisions of the Revised Treaty and Protocol.

## Detailed discussion

### Fiscally transparent entity/arrangement concept (Article 1)

Paragraph 2 of Article 1 states that 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.

### Tie-breaker rule for non-individual dual resident persons (Article 4)

Under Paragraph 3 of Article 4, in cases where a person other than an individual is a dual resident, the competent authorities of the two Contracting States will seek a determination by mutual agreement of the country of residence based on the place of the head or main office, the 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 will not be entitled to any relief or exemption under the Revised Treaty.

### Permanent establishment (PE) (Article 5)

Reflecting the recommendation in the 2015 BEPS Report on Action 7, the PE definition is expanded by adding: An enterprise is deemed to have a PE if a person acting in a Contracting State on behalf of the enterprise habitually concludes certain contracts, or habitually plays the principal role leading to the conclusion of those contracts that are routinely concluded without material modification by the enterprise.

Article 5 also extends the construction PE period from 6 months to 12 months.

### Dividends (Article 10)

A reduced 5% rate applies on dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends throughout a 365-day period.

### Alienation of property (Article 13)

Paragraph 6 of Article 13 provides exclusive resident country taxation on gain disposition of property if the gain is not otherwise subject to one of the five conditions.

### Entitlement to benefits (Article 23)

Article 23 of the Revised Treaty provides that a benefit under the Revised Treaty will be denied if obtaining the benefit under the treaty is one of the principle purposes of any arrangement or transaction that would result directly or indirectly in that benefit.

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## Endnotes

1. Organisation for Economic and Co-operation and Development.
2. Base Erosion and Profit Shifting.

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