

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

## **NEW DUE DATE FOR NEW AND INCREASED ASSESSMENTS: ORDER IN COUNCIL**

### **Proposal**

1. This paper proposes that the Cabinet Legislation Committee authorise the submission to the Executive Council of the attached Order in Council, which will set a date that section 142AB of the Tax Administration Act 1994 in respect of income tax will come into force.

### **Background**

2. The *Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018* (the Act) was enacted on the 29<sup>th</sup> of March 2018. This legislation included a provision to align the due date of default assessments whether these are electronically or manually issued.
  - 2.1 The date the provision comes into force is set by Order in Council for particular tax types as they are migrated to Inland Revenue's new technology platform START<sup>1</sup> and where incremental penalties have been removed from the tax type.
  - 2.2 Once Business Transformation release 3 goes live in April 2019, income tax will meet those two requirements. This paper requests that Cabinet approve by Order in Council that the provision to align the due dates for default assessments comes into force on 8 July 2019<sup>2</sup>.

### **Default assessments and due dates**

3. The *Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018* (the Act) was enacted on the 29<sup>th</sup> of March 2018. This legislation included a provision to align the due date of Commissioner initiated assessments in the absence of a return (default assessments) whether these are electronically or manually issued.
4. Where a taxpayer fails to file a tax return with Inland Revenue the Commissioner of Inland Revenue has the power to issue an assessment for the tax that she believes the taxpayer would have owed had they filed their return. This is called a default assessment.

1 Simplified Tax and Revenue Technology – Inland Revenue's new technology platform

2 This date is the first day of the week that default assessments using the new rule could be issued.

- 4.1 There are two types of default assessment:
  - 4.1.1 one that is system generated – this is an electronic default assessment (EDA) that is automatically issued by the computer system based on a standard formula; and
  - 4.1.2 one that is manually issued by a staff member - this is termed a non-electronic default assessment (NDA) and is issued after consideration by an Inland Revenue staff member who uses information to make a more considered assessment of a taxpayer's liability.
- 4.2 There are a number of different rules that apply to default assessments depending on whether these are EDAs or NDAs. One of these differences is the due date for payment. The due date is contained in section 142A of the *Tax Administration Act 1994*.
- 4.3 The due date can range between the original due date for payment for the period in question to a new due date which is set 30 days after the issue of the default assessment depending on the type of default assessment and any subsequent amendments. This can be confusing for taxpayers and agents.
- 4.4 This change will simplify and standardise due dates for default assessments. The Act inserted a new section 142AB to the *Tax Administration Act 1994*. This section will come into force from the date appointed by the Governor-General through Order in Council, and one or more orders may be made setting different application dates for different tax types.
- 4.5 This provision sets all due dates in respect of default assessments and any amendments to the original due date of tax for the period.
- 4.6 During consultation on this change in the select committee process it was outlined that there would be two criteria to be met before a tax type could have the new provision apply:
  - 4.6.1 the tax type must be one that had migrated to Inland Revenue's new technology platform, START; and
  - 4.6.2 the tax type did not have incremental penalties applying to it. The reason for this latter condition was that it could be particularly harsh to apply an original due date to taxes that continued to have incremental penalties applying.
- 4.7 Currently three tax types do not have incremental penalties applying: GST; income tax; and working for families debt. Working for families assessments are treated as income tax and are included in the proposed Order in Council. From April 2019 all of these will have been migrated to the START platform. GST was made subject to this provision with effect from April 2018.
- 4.8 The proposed Order in Council sets a date that for section 142AB in relation to income tax and comes into force on the 8<sup>th</sup> of July 2019.

- 4.9 Other taxes will move to use this new provision as those two criteria are met and an Order in Council is made or by 1 April 2023 at the latest.

### **Consultation**

5. The provision was consulted on as part of the select committee process on the *Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018*.

5.1 The 28-day rule requires that regulations must not come into force until at least 28 days after they have been notified in the *New Zealand Gazette*.

5.2 I propose that the Order in Council be in accordance with this rule.

### **Financial Implications**

6. There are no financial implications to the Order in Council.

### **Legislative Implications**

7. The Parliamentary Counsel Office has certified that the Order in Council is in order for submission to Cabinet.

### **Impact Analysis**

8. The Regulatory Impact Analysis requirements do not apply to the proposal as it provides solely for the commencement of an existing legislative provision. Section 142AB of the Tax Administration Act 1994 was designed to come into force using an Order in Council.

### **Human Rights**

9. There are no human rights implications to this Order in Council.

### **Gender Implications**

10. There are no specific gender implications to this Order in Council.

### **Disability Perspective**

11. There are no specific disability implications to this Order in Council.

### **Publicity**

12. Following the making of the Order in Council by the Executive Council, a media statement will be issued.
13. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Order in Council is made.

## Proactive Release

14. I propose to release this Cabinet paper, and associated Order in Council, in full shortly following the publication of the signed Order in Council in the New Zealand Gazette.

## Recommendations

The Minister of Revenue recommends that the Cabinet Legislation Committee:

1. **note** that the attached Order in Council prescribes when section 142AB of the Tax Administration Act 1994 in respect of income tax comes into force, on the 8<sup>th</sup> of July 2019.
2. **authorise** the submission to the Executive Council of the attached Taxation (New Due Date for New and Increased Assessments) Commencement Order 2019.

Authorised for lodgement

Hon Stuart Nash  
Minister of Revenue