

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Order in Council: Tax Administration (Top of the South Island Flood Event) Order 2021 - use of money interest relief**

Date:	20 July 2021	Priority:	High
Security level:	In Confidence	Report number:	IR2021/314

Action sought

	Action sought	Deadline
Minister of Revenue	<p>Approve and lodge the attached paper to Cabinet office</p> <p>Refer a copy of this report and the attached Cabinet paper to the Minister of Finance</p>	10am, Thursday 22 July 2021

Contact for telephone discussion (if required)

Name	Position	Telephone
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Brandon Sloan	Principal Policy Advisor	

20 July 2021

Minister of Revenue

**Order in Council: Tax Administration (Top of the South Island Flood Event)
Order 2021 – use of money interest relief**

1. A medium-scale adverse event has been declared for the top of the South Island.
2. Between 15 to 18 July 2021 the West Coast, Nelson/Tasman, and Marlborough regions were subject to very heavy rainfall and resulting inundation. The most affected districts are Buller, Grey, Westland, Tasman, and Marlborough. Buller and Marlborough declared a state of emergency during the event.
3. In response to that event, this report recommends you approve and lodge the attached paper to Cabinet. The paper seeks Cabinet's approval for an Order in Council allowing Inland Revenue to remit interest charges on the late payment of tax for taxpayers who are physically prevented from making payment as a result of the flooding. The current rate of interest (use-of-money interest) on underpayments of tax is 7%.
4. Cabinet's approval will be provided by a group of Ministers with power to act, and a special Executive Council meeting is being arranged for 26 July 2021 to make the Order in Council.

Impact of the floods on taxpayers

5. The level of flooding and disruption resulting from the heavy rain that fell over the period 15 July to 18 July 2021 has or will physically prevent some taxpayers from meeting their tax obligations, including filing, and paying tax on time. The inundation in the affected areas has impacted local infrastructure and taxpayers in those communities need to focus on the immediate effects of the floods rather than their tax affairs.
6. There are several key tax payment dates where tax is due around this time of July. For example, PAYE is due 20 July for many taxpayers in the affected regions. FBT quarterly returns are also required for some taxpayers on the same date.
7. Given the extent of the damage for example, in Westport or Spring Creek, near Blenheim, GST returns for taxpayers with taxable periods ending June, and due 28 July, are also likely to be affected. Non-standard provisional tax balance date taxpayers in the affected regions may also be affected as they have tax payments due 28 July.
8. Late payment of these tax types results in Inland Revenue automatically imposing interest.
9. The number of taxpayers affected by the flooding is not yet known.
10. Relief from late payment and late filing penalties is already available for taxpayers affected by the flooding. However, this relief does not extend to the remission of interest charged to compensate the Crown for the loss of the use of the revenue. This is because the remission of interest requires a higher threshold, such as a natural disaster, and Cabinet approval before the relief can be provided.

Order in Council: Tax Administration (Top of the South Island Flood Event) Order 2021

11. The Tax Administration Act 1994 allows for an Order in Council to be made allowing Inland Revenue to remit interest where:
 - 11.1 an emergency event physically prevents a taxpayer from paying tax on time;
 - 11.2 this non-payment results in the imposition of interest; and
 - 11.3 the taxpayer is a member of a class of persons eligible for remission of interest if the Order in Council declaring the emergency event describes such a class of persons.
12. The major flooding in the top of the South Island meets the criteria for remission. The Order would allow Inland Revenue to remit use-of-money interest incurred by taxpayers who were physically prevented from paying their tax on time due to the flooding. For the purposes of the Order, the emergency event is defined as the floods resulting from the heavy rain the West Coast, Nelson/Tasman, and Marlborough regions received between 15 and 18 July.
13. While the Order allows Inland Revenue to remit amounts of interest incurred before the Order is made, it is desirable to authorise the relief as soon as possible. The reasons for this are taxpayer certainty and equity, and the efficient use of Inland Revenue resource.
14. The Order will expire on 31 October 2021. Tax debts that remain unpaid from PAYE, GST or FBT obligations would incur interest after that date.

The Wellington region is not within scope of the proposed Order

15. Parts of the Wellington region have also been affected by the heavy rainfall over 16 and 18 July, but on a localised basis. The Wellington region has not been included in the medium-scale adverse event declaration and is not included within the scope of the proposed Order in Council allowing UOMI remission. There is no evidence to suggest that taxpayers affected by the localised flooding have been or will be physically prevented from paying tax as existing telecommunications and physical infrastructure remains intact. Wellington taxpayers affected by the heavy rain and who cannot meet their tax obligations will be considered on a case-by-case basis under Inland Revenue's existing administrative relief rules. They would not, however, be automatically eligible for interest remission relief.

Other tax relief for taxpayers

16. Under existing administrative powers, Inland Revenue is offering relief from late payment and late filing penalties for taxpayers affected by the floods. Farmers with income equalisation accounts who have been affected by flooding are able to make early withdrawals.
17. Some taxpayers may, under the circumstances, have lost some or all of their tax records. Inland Revenue is able to manage this situation under current law.
18. Recent tax changes giving favourable treatment to donated trading stock will also be of assistance to support the region's recovery.

Fiscal implications

19. The baseline forecasts do not include the emergency event, or the potential interest charges should the event trigger additional debt. Remission of interest charges

arising from the West Coast, Nelson/Tasman, and Marlborough flood event will not affect existing fiscal baselines.

Consultation

20. Inland Revenue's advice has been informed by advice from the Ministry for Primary Industries.
21. The Treasury has been consulted in the preparation of this report. Officials have consulted the Federated Farmers and they support the proposed interest remission relief for the affected regions. The Chartered Accountants of Australia and New Zealand has been informed.

Next steps

22. The attached paper to Cabinet should be referred to the Prime Minister, the Deputy Prime Minister, the Minister for Crown-Māori Relations, and the Minister for Housing (as Ministers with the Power to Act as per CAB-21-MIN-0282) for their approval. A special Executive Council meeting is being arranged for 26 July 2021 to make the Order in Council.


Recommended action

We recommend that you:

- (a) **Refer** the attached Cabinet paper to the Prime Minister, the Deputy Prime Minister, the Minister for Crown-Māori Relations, and the Minister for Housing, as Ministers with the Power to Act, as per CAB-21-MIN-0282, for their approval.

Referred/Not referred

s 9(2)(a)



Brandon Sloan

Principal Policy Advisor

Policy and Regulatory Stewardship

Hon David Parker

Minister of Revenue

/ /2021