

In confidence

Office of the Minister of Revenue

Chair, Cabinet

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

Proposal

- 1 I seek Cabinet's agreement to allow Inland Revenue to remit interest charges on late payments of tax caused by taxpayers being physically prevented from paying tax due to the recent flooding in the South Island – specifically the West Coast, Nelson/Tasman, and Marlborough regions. Allowing Inland Revenue to remit this interest requires an Order in Council.

Policy

- 2 A medium-scale adverse event has been declared in response to the recent heavy rain and subsequent flooding in the West Coast, Nelson/Tasman, and Marlborough. The most affected districts are Buller, Grey, Westland, Tasman, and Marlborough. Buller and Marlborough declared a state of emergency during the event. The level of flooding and disruption in these regions is physically preventing some taxpayers from meeting their tax obligations, including filing, and paying tax on time.
- 3 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 (use-of-money interest) charged by Inland Revenue to compensate the Crown for the loss of the use of revenue. This is because the remission of interest requires a higher threshold, such as a natural disaster, and requires Cabinet approval before the relief can be provided. The current rate of interest on underpayments of tax is 7%.
- 4 The Tax Administration Act 1994 provides for an Order in Council to allow Inland Revenue to remit interest where:
 - 4.1 an emergency event physically prevents a taxpayer from paying tax on time;
 - 4.2 the non-payment of tax results in the imposition of interest; and
 - 4.3 the taxpayer is a member of class of persons eligible for remission of interest if the Order in Council declaring the emergency event describes such a class of person.
- 5 The major flooding in the top of the South Island meets the criteria for interest remission. The Order authorises Inland Revenue to remit use-of-money interest incurred by taxpayers who were physically prevented from paying their tax on time due to the floods. For the purposes of the Order, the emergency event is defined as the floods in the West Coast, Nelson/Tasman, and Marlborough resulting from the heavy rainfall that fell between 15 and 18 July 2021. The Order will commence on its notification in the *Gazette* and will expire 31 October 2021.

Timing and 28-day rule

- 6 A waiver of the 28-day rule is sought, to enable the regulations to take effect from the day after their notification in the *Gazette*. Exercise of this power is taxpayer-friendly, and is not expected to affect anyone negatively. Further, the sooner the relief is effective the more certain taxpayers' positions will be, and Inland Revenue's processing of relief applications will be more efficient. Once in force, the Order will enable Inland Revenue to remit interest charged prior to the making of the Order.

Compliance

- 7 Section 183ABA of the Tax Administration Act 1994 provides the statutory authority for the Governor-General to declare an event to be an emergency event and qualify for the making of an Order in Council. This event meets the Tax Administration Act's qualifying criteria.

- 8 The Order in Council complies with the following:

The principles of the Treaty of Waitangi	Not applicable
The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993	Not applicable
The principles and guidelines set out in the Privacy Act 1993	Not applicable
Relevant international standards and obligations	Not applicable
The Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee	Compliant

Regulations Review Committee

- 9 Officials believe there are no grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

- 10 The regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet, except that they will come into force earlier than the 28th day after the date of their notification in the *Gazette*.

Impact Analysis

Regulatory Impact Assessment

- 11 The Regulatory Impact Analysis Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they are only modifying the effect of primary legislation, under powers only able to be exercised by the government during a declared emergency or emergency transition period.

Climate Implications of Policy Assessment

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

Publicity

- 13 I will announce Inland Revenue's ability to remit use-of-money interest once the Order is in effect and notified in the *Gazette*.

Proactive Release

- 14 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers in whole within 30 working days of Cabinet making final decisions.

Consultation

- 15 Inland Revenue officials have consulted with the Treasury who agree with the proposal in this paper. Federated Farmers were also consulted and agree with the proposed order. My officials have also informed the Chartered Accountants of Australia and New Zealand about Inland Revenue's proposed response to the flooding event.

Recommendations

The Minister of Revenue recommends that Cabinet:

- 1 Note that the Tax Administration Act 1994 authorises the Commissioner of Inland Revenue to remit interest charged to taxpayers for late payment of tax, where the late payment was due to the effects of an emergency event declared by Order in Council.
- 2 Note that the event described as the West Coast, Nelson/Tasman, and Marlborough Flood Event meets the criteria specified in the Tax Administration Act 1994 for the declaration of an emergency event.
- 3 Authorise the submission to the Executive Council of the Tax Administration (Top of the South Island Flood Event) Order 2021.
- 4 Note that this remission of interest is not expected to have a fiscal cost.
- 5 Note that a waiver of the 28-day rule is sought on the grounds that the exercise of the power will only positively affect taxpayers, and the power it confers will apply to events before the making of the Order.
- 6 Agree to the waiver of the 28-day rule so that the regulations can come into force after their notification in the *Gazette*.

Authorised for lodgement

Hon David Parker

Minister of Revenue