

Hon David Parker, Minister of Revenue

Information Release

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

May 2022

Availability

This information release is available on Inland Revenue's tax policy website at <https://taxpolicy.ird.govt.nz/publications/2022/2022-ir-cab-21-sub-0287>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2021/314	Tax policy report	Order in Council: Tax Administration (Top of the South Island Flood Event) Order 2021 - use of money interest relief	20 July 2021
2	CAB-21-SUB-0287	Cabinet paper	Tax Administration (Top of the South Island Flood Event) Order 2021	22 July 2021
3	CAB-21-MIN-0287	Minute	Tax Administration (Top of the South Island Flood Event) Order 2021	22 July 2021

Additional information

The Cabinet paper was considered and confirmed by Cabinet on 22 July 2021.

One attachment to the Cabinet paper is not included in this information release as it is publicly available:

- Tax Administration (Top of the South Island Flood Event) Order 2021¹

Information withheld

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 Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

- 9(2)(a) to protect the privacy of natural persons, including deceased people

¹ Available at <https://www.legislation.govt.nz/regulation/public/2021/0194/latest/whole.html>

Accessibility

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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
Peter Frawley	Policy Lead	s 9(2)(a)
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

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



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

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

Portfolio **Revenue**

On 22 July 2021, Cabinet:

- 1 **noted** 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 **noted** 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 **authorised** the submission to the Executive Council of the Tax Administration (Top of the South Island Flood Event) Order 2021 [PCO 23987/2.0];
- 4 **noted** that this remission of interest is not expected to have a fiscal cost;
- 5 **noted** 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 **agreed** to the waiver of the 28-day rule so that the regulations can come into force after their notification in the Gazette.

Michael Webster
Secretary of the Cabinet