

In Confidence

Office of the Minister of Revenue

Chair, Cabinet

## **Tax Administration (August Flood Events) Order 2022**

### **Proposal**

- 1 I seek Cabinet's agreement to allow Inland Revenue to remit interest charges on late payments for taxpayers who have been significantly adversely affected by recent flooding in the top of the North and South Islands – specifically, the Far North district, and the Marlborough, Nelson, and Tasman 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 Far North district, and the Marlborough, Nelson, and Tasman regions, between 17 and 21 August 2022. Marlborough, Nelson, and Tasman declared a state of emergency during the event. The level of flooding and disruption in these regions has significantly adversely affected the ability of some taxpayers to meet their tax obligations, including filing and paying tax on time.
- 3 There are several key tax payment dates around this time of August. For example, PAYE was due on 22 August for many taxpayers in the affected regions. GST returns and payments, as well as provisional income tax instalments, are also required for some taxpayers on 29 August. Given the extent of the damage in some affected areas, these returns and payments are likely to be affected and result in interest charges and penalties.
- 4 Inland Revenue has the power to provide relief from late payment and late filing penalties for taxpayers affected by flooding, at the Commissioner's discretion. 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 7.28 percent. Without relief, the late payment of tax due on the statutory date results in the automatic statutory imposition of interest.
- 5 The Tax Administration Act 1994 provides for an Order in Council to allow Inland Revenue to remit interest where:
  - 5.1 an emergency event has, or will, significantly adversely affect a taxpayer's ability to pay an amount of tax on time, or make an accurate forecast of provisional tax;
  - 5.2 the non-payment of tax results in the imposition of interest; and

- 5.3 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.
- 6 The major flooding in the top of the North and South Islands meets the criteria for interest remission. The Order authorises Inland Revenue to remit use-of-money interest incurred by taxpayers whose ability to pay their tax on time was significantly adversely affected by the floods. For the purposes of the Order, the emergency event is defined as the floods in the Far North district, and the Marlborough, Nelson, and Tasman regions, resulting from the heavy rainfall that fell between 17 and 21 August 2022.
- 7 The Order will commence on its notification in the *Gazette* and will expire on 31 January 2023.

### Timing and 28-day Rule

- 8 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

- 9 Section 183ABA of the Tax Administration Act 1994 provides the statutory authority for the Governor-General by Order in Council to declare an event to be an emergency event and allow Inland Revenue to remit use-of-money interest. This event meets the Tax Administration Act's qualifying criteria.

- 10 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

### Financial Implications

- 11 The baseline forecasts do not include the emergency event, nor the potential UOMI charges should the event trigger additional debt. Remission of UOMI for significantly adversely affected taxpayers in the Far North district, and the Marlborough, Nelson, and Tasman regions, will not affect existing fiscal baselines.

## **Regulations Review Committee**

- 12 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 327.

## **Certification by Parliamentary Counsel**

- 13 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 28<sup>th</sup> day after the date of their notification in the *Gazette*.

## **Impact Analysis**

### **Regulatory Impact Assessment**

- 14 The Treasury's Regulatory Impact Analysis team has determined that this proposal to allow Inland Revenue to remit interest charges on late payments is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it is intended to manage the direct actions taken to protect the public in response to a declared emergency event and intended to temporarily defer or extend legislative deadlines where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome.

### **Climate Implications of Policy Assessment**

- 15 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**

- 16 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**

- 17 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**

- 18 Inland Revenue officials have consulted with the Treasury, and the Ministry for Primary Industries, which agree with the proposal in this paper. Federated Farmers were also consulted and agree with the proposed Order. The Department of the Prime Minister and Cabinet, and Chartered Accountants Australia and New Zealand have been informed of the proposed Order.

## 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 August Flood Events 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 (August Flood Events) Order 2022.
- 4 Note that this remission of interest is not expected to have an effect on fiscal baselines.
- 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