

# Hon David Parker, Minister of Revenue

## Information Release

### Tax Administration (COVID-19 Response Variations) Order 2021

March 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-cbc-21-sub-0076>

#### Documents in this information release

#	Reference	Type	Title	Date
1	IR2021/303	Tax policy report	Extending the Commissioner's COVID-19 administrative flexibility	7 July 2021
2	IR2021/328	Tax policy report	Order in Council: Extending the Commissioner's COVID-19 administrative flexibility	30 July 2021
3	CBC-21-SUB-0076	Cabinet paper	Tax Administration (COVID-19 Response Variations) Order 2021	25 August 2021
4	CBC-21-MIN-0076	Minute	Tax Administration (COVID-19 Response Variations) Order 2021	25 August 2021

#### Additional information

The Cabinet paper was considered by the Cabinet Business Committee on 25 August 2021 and confirmed by Cabinet on 30 August 2021.

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

- Tax Administration (COVID-19 Response Variations) Order 2021<sup>1</sup>

#### 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

<sup>1</sup> Available at <https://www.legislation.govt.nz/regulation/public/2021/0234/latest/whole.html>

## Accessibility

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## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report:**      **Extending the Commissioner's COVID-19 administrative flexibility**

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<b>Date:</b>	7 July 2021	<b>Priority:</b>	Medium
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2021/303

### Action sought

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	<b>Action sought</b>	<b>Deadline</b>
Minister of Finance	<b>Agree</b> to the recommendations <b>Note</b> the contents of this report	19 July 2021
Minister of Revenue	<b>Agree</b> to recommendations <b>Note</b> the contents of this report	19 July 2021

### Contact for telephone discussion (if required)

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Bary Hollow	Policy Lead – Tax Administration (Acting)	s 9(2)(a)
Natisha Jones	Policy Advisor	

7 July 2021

Minister of Finance  
Minister of Revenue

## **Extending the Commissioner's COVID-19 administrative flexibility**

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1. This report seeks your agreement to extend the Commissioner of Inland Revenue's ("Commissioner") discretionary power to provide administrative flexibility for taxpayers affected by COVID-19. This power was introduced on 30 April 2020 as part of a range of response measures to COVID-19.
2. The *COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020* inserted the discretionary power into the *Tax Administration Act 1994*. The discretion allows the Commissioner to vary time related requirements (timelines, due dates, deadlines, and time periods), procedural or administrative requirements when taxpayers are likely to be impacted by COVID-19 and compliance with current requirements is impossible, unreasonable, or impractical.
3. The administrative flexibility measure was limited in application to an 18-month period ending 30 September 2021, unless extended by an Order in Council upon recommendation of the Minister of Revenue. Officials recommend the discretionary power be extended for one year, to enable the Commissioner to respond quickly in the event taxpayers are further impacted by COVID-19.

### **Background**

4. The discretionary power provides more flexibility for taxpayers to comply with their tax obligations where they have been affected by COVID-19. The legislation enables the Commissioner to issue a COVID-19 variation to provide flexibility in the compliance obligations under the Inland Revenue Acts. Where taxpayers comply with a variation, they are treated as if they complied with the requirement set out in legislation.
5. When a taxpayer applies for a COVID-19 variation, the Commissioner must first consider whether the issue can be resolved using existing legislation, including the Commissioner's care and management discretion. If the issue cannot be resolved, the Commissioner may only issue a variation if compliance is impossible, impractical, or unreasonable in circumstances arising from the imposition of COVID-19 response measures or as a consequence of COVID-19.
6. Any COVID-19 variation issued by the Commissioner is optional for taxpayers to apply, taxpayers may choose to comply with the requirements set out in legislation rather than any variation issued. This is to ensure that taxpayers are not worse-off from the variation.
7. Since the power has been in force, the Commissioner has issued 12 variations in 2020 and two variations in 2021, with 17 requests being declined.<sup>1</sup> Generally, variations are targeted and time limited.

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<sup>1</sup> Three of the 17 applications noted were resolved using the Commissioner's care and management provision.

8. For example, a variation was given extending the due date for filing statements of R&D loss tax credits and R&D repayment tax from 1 April 2020 until 31 August 2020. The variation was limited to taxpayers for whom the impact of COVID-19 response measures or the consequences of COVID-19 had a material impact on them not filing the statements on time.
9. Although Inland Revenue does not expect the power to be exercised while in the current circumstances, retaining the discretionary measure will be of use in the event of future outbreaks and/or lockdowns impacting taxpayer's ability to meet their compliance obligations.

### **Administrative implications**

10. There are no significant administrative implications, as the process for assessing and implementing variations under the COVID-19 administrative flexibility measure is already in place.

### **Fiscal implications**

11. Fiscal costs for the COVID-19 variation power are unquantifiable in advance because it depends how the power is exercised. However, the fiscal impact of the variations issued so far have been minor or immaterial as most variations related to the timing allowed for elections or applications to occur.
12. Each fiscal impact depends on the period affected by the variation. For example, two very similar GST variations had varying fiscal impacts depending on whether the variations effectively crossed fiscal years.
13. One variation allowed GST-registered persons to elect to change from six-monthly filing periods to one-monthly, enabling any refunds to be claimed earlier. In this instance the fiscal cost was approximately \$4 million in 2019/20, as GST refunds were claimed in 2019/20 fiscal year instead of the 2020/21 year. In comparison, a similar GST variation had no June year fiscal impact for the government because it covered return periods which did not cross between June fiscal years. However, it was still beneficial from a taxpayers' perspective because it allowed for refund claims earlier than would otherwise have occurred.

### **Consultation**

14. Treasury has been consulted on this report.

### **Next steps**

15. If you agree to the extension, officials will issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to extend the power by one year.
16. Once a draft Order in Council is prepared, we will report to you with a draft Cabinet paper for submission with the Cabinet Legislation Committee.
17. For the Order in Council to come into effect by 30 September, the Cabinet paper would need to be considered by the Cabinet Legislation Committee in the second half of August, or a waiver to the 28-day rule obtained.

**Recommended action**

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We recommend that you:

- a. **agree** to extend the COVID-19 administrative flexibility measure for one year (to 30 September 2022).

Agreed/Not agreed

Agreed/Not agreed

- b. **note** that the fiscal impact of the decision is unable to be quantified but is likely to be minor.

Noted

Noted

- c. **authorise** the Parliamentary Council Office to draft an Order in Council to extend the Commissioner's discretionary power.

Authorise/Not authorised

**Bary Hollow**

Policy Lead – Tax Administration (acting)  
Policy and Regulatory Stewardship

**Hon David Parker**

Minister of Revenue

/ /2021

**Hon Grant Robertson**

Minister of Finance

/ /2021



## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report:**      **Order in Council: Extending the Commissioner's COVID-19 administrative flexibility**

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<b>Date:</b>	30 July 2021	<b>Priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2021/328

### Action sought

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	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Agree</b> to the recommendation <b>Authorise and lodge</b> the attached Cabinet Legislation Committee paper by 19 August for your consideration at LEG on 26 August	19 August 2021

### Contact for telephone discussion (if required)

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Bary Hollow	Policy Lead – Tax Administration (Acting)	s 9(2)(a)
Natisha Jones	Policy Advisor	

30 July 2021

Minister of Revenue

## **Order in Council: Extending the Commissioner's COVID-19 administrative flexibility**

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### **Summary**

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1. This report asks you to consider and authorise the lodgement of the attached draft Cabinet Legislation Committee (LEG) paper. The report seeks approval to submit an Order in Council to the Executive Council to extend the Commissioner of Inland Revenue's (Commissioner) discretionary power to provide administrative flexibility for taxpayers affected by COVID-19 (administrative flexibility measure) by one year.

### **Context and Background**

2. You previously agreed to extend the COVID-19 administrative flexibility measure by one year (to 30 September 2022), and for officials to instruct the Parliamentary Counsel Office (PCO) to draft an Order in Council to give effect to this change (IR2021/303 refers).
3. The administrative flexibility measure was introduced in 2020 in the *Tax Administration Act 1994* to provide more flexibility for taxpayers to comply with their tax obligations where they have been affected by the impacts of COVID-19. The measure was limited in application to an 18-month period ending 30 September 2021, unless extended by an Order in Council upon recommendation of the Minister of Revenue.
4. The administrative flexibility measure allows the Commissioner to vary time-related, procedural or administrative requirements (timelines, due dates, deadlines, and time periods) when taxpayers are likely to be impacted by COVID-19 and compliance with current requirements is impossible, unreasonable or impractical. The legislation enables the Commissioner to issue a COVID-19 variation to provide flexibility in the compliance obligations under the Inland Revenue Acts. Where taxpayers choose to comply with a variation, they are treated as if they complied with the requirement set out in legislation.
5. The Parliamentary Counsel Office are currently drafting the Tax Administration (COVID-19 Response Variations) Order 2021 (Order in Council). Officials have prepared a LEG paper for your consideration and, if you agree, for lodgement to the Cabinet Office by 19 August 2021, for consideration at the LEG meeting of 26 August 2021.

### **Implementation**

6. The proposed change has an unqualifiable fiscal impact in advance because it depends how the power is exercised. However, the fiscal impact of the variations issued so far have been minor or immaterial as most variations related to the timing allowed for elections or applications to occur as noted in our previous report (IR2021/303 refers). Any administrative costs of implementing the change will be accommodated within existing processes for assessing and implementing COVID-19 variations.



## Consultation

7. The Treasury and the Parliamentary Counsel Office have been informed of the contents of this report.

## Next steps

8. If you agree, the Parliamentary Counsel Office will provide the Cabinet Office with the Order in Council.
9. If you are comfortable with the draft LEG paper, please authorise and lodge with the Cabinet Office by 10am Thursday 19 August 2021.
10. Our intention is that the LEG paper be considered at the LEG meeting of Thursday 26 August 2021 and apply to extend the time period of the power. We have attached speaking notes for your use at LEG.
11. We recommend this report and the Cabinet paper be proactively released in full shortly following the notification of the signed Order in Council in the New Zealand Gazette.

## Recommended action

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We recommend that you:


12. **agree** to proactively release this report and the Cabinet paper following the notification of the signed Order in Council in the New Zealand Gazette.

Agree/Not agree

13. **authorise** the lodgement of the attached draft Cabinet Legislation Committee paper, seeking Cabinet approval to submit an Order in Council to the Executive Council, with the Cabinet Office by 19 August 2021.

Authorise

s 9(2)(a)



**Bary Hollow**

Policy Lead (Acting) – Tax Administration  
Policy and Regulatory Stewardship

**Hon David Parker**

Minister of Revenue  
/ /2021



In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

## **TAX ADMINISTRATION (COVID-19 RESPONSE VARIATIONS) ORDER 2021**

### **Proposal**

1. This paper seeks the Committee's agreement to extend the Commissioner of Inland Revenue's (Commissioner) COVID-19 administrative flexibility measure by one year (to September 2022).
2. It also seeks the Committee's agreement to submit the Tax Administration (COVID-19 Response Variations) Order 2021, which gives effect to the extension, to the Executive Council.

### **Policy**

3. In 2020, greater administrative flexibility was granted to the Commissioner in the *Tax Administration Act 1994* as part of the response to COVID-19. The discretion allows the Commissioner to vary time related requirements (such as timelines, due dates, deadlines, and time periods), procedural or administrative requirements when taxpayers are likely to be impacted by COVID-19 and compliance with current requirements is impossible, unreasonable, or impractical.
4. The discretionary power allows the Commissioner to issue variations to provide flexibility for taxpayers to comply with their tax obligations under the Inland Revenue Acts where they have been affected by the impacts of COVID-19. Where taxpayers comply with a variation, they are treated as if they complied with the requirement set out in legislation.
5. Any COVID-19 variation issued by the Commissioner is optional for taxpayers to apply; taxpayers may choose to comply with the requirements set out in legislation rather than any variation issued. This is to ensure that taxpayers are not worse off from the variation.
6. Extending the Commissioner's COVID-19 administrative flexibility measure to 30 September 2022 will enable the Commissioner to act quickly in the event taxpayers are further impacted by COVID-19.
7. To implement this proposal, the Parliamentary Counsel Office has drafted the Tax Administration (COVID-19 Response Variations) Order 2021. This is in accordance with the empowering provision in the *Tax Administration Act 1994*. The section provides that the administrative flexibility measure was to be time limited to an 18-month period, unless extended by Order in Council upon the recommendation of the Minister of Revenue.

## Timing and 28-Day Rule

8. I propose that the extension of the Commissioner's administrative flexibility measure under section 6I of the *Tax Administration Act 1994* is extended by one year (to 30 September 2022), and applies 28 days after the gazetting date. The Order would then be made in accordance with the rule that a regulation must not come into force, until at least 28 days after the public have been notified in the New Zealand Gazette.

## Compliance

9. The Order complies with:
  - 9.1 the principles of the Treaty of Waitangi;
  - 9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 9.3 the principles and guidelines set out in the Privacy Act 2020;
  - 9.4 relevant international standards and obligations; and
  - 9.5 the Legislation Guidelines, which are maintained by the Legislation Design and Advisory Committee.
10. Section 6H of the *Tax Administration Act 1994* provides that the measure may be extended upon the recommendation of the Minister of Revenue if it is reasonably necessary in the circumstances because of the continuing impact of COVID-19 related measures or circumstances.
11. I consider that the discretionary power should be extended as it is necessary to enable the Commissioner to respond quickly in the event taxpayers are further impacted by the effects of COVID-19. I consider the statutory requisites have been met.

## Regulations Review Committee

12. There are no anticipated 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

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

## Impact Analysis

14. The Treasury's Regulatory Impact Analysis Team has determined that the proposal to extend the Commissioner of Inland Revenue's discretionary power (section 6I of the *Tax Administration Act 1994*) to provide administrative flexibility for taxpayers affected by COVID-19 by one year (to September 2022) is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impact on businesses, individuals, and not-for-profit entities.

## Communications

15. The new Order in Council will be published in the New Zealand Gazette and on Inland Revenue's website. Inland Revenue will also publish an article about these changes in its *Tax Information Bulletin*.

## Proactive Release

16. I propose to release the policy report and this Cabinet paper in full, shortly following the notification of the signed Order in Council in the New Zealand Gazette, subject to redactions under the Official Information Act 1982.

## Consultation

17. The Treasury have been consulted on the extension. The Treasury and the Parliamentary Counsel Office have been informed of the contents of this paper.

## Recommendations

I recommend that the Cabinet Legislation Committee:

1. **agree** to the extension of the Commissioner's administrative flexibility measure;
2. **note** that the Tax Administration (COVID-19 Response Variations) Order 2021 will give effect to the decision referred to in recommendation 1 above; and
3. **authorise** the submission to the Executive Council of the Tax Administration (COVID-19 Response Variations) Order 2021.

Authorised for lodgement

Hon David Parker  
Minister of Revenue





# Cabinet Business Committee

## Minute of Decision

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### Tax Administration (COVID-19 Response Variations) Order 2021

**Portfolio**                      **Revenue**

On 25 August 2021, the Cabinet Business Committee:

- 1        **agreed** to a one year extension of the Commissioner of Inland Revenue's administrative flexibility measure under section 61 of the Tax Administration Act 1994;
- 2        **noted** that the Tax Administration (COVID-19 Response Variations) Order 2021 will give effect to the decision referred to in paragraph 1 above;
- 3        **authorised** the submission to the Executive Council of the Tax Administration (COVID-19 Response Variations) Order 2021 [PCO 24000/3.0].

Rachel Clarke  
Committee Secretary

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**Present:**

Rt Hon Jacinda Ardern (Chair)  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Damien O'Connor  
Hon Stuart Nash  
Hon Kris Faafoi  
Hon Michael Wood

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet