



## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report: Order in Council: Tax Administration (July Adverse Weather Event) Order 2022**

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<b>Date:</b>	1 August 2022	<b>Priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2022/377

### Action sought

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	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Approve and lodge</b> the attached paper to Cabinet office	10am, Thursday, 4 August 2022

### Contact for telephone discussion (if required)

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Peter Frawley	Policy Lead	s 9(2)(a) [Redacted]
Brandon Sloan	Principal Policy Advisor	s 9(2)(a) [Redacted]

1 August 2022

Minister of Revenue

## **Order in Council: Tax Administration (July Adverse Weather Event) Order 2022**

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1. The report recommends you agree to an Order in Council that permits Inland Revenue to remit use of money interest (UOMI) charged on the late payment of tax. The proposed Order is a tax relief measure in response to the flooding and weather-related events experienced in several areas of New Zealand as a result of the severe storm fronts in the latter half of July 11 to 31 July 2022. The Order would declare the recent weather fronts as an emergency event for the purposes of the Inland Revenue Acts.<sup>1</sup>
2. If you agree to the recommendations in this report, we also recommend you approve and lodge the attached paper to Cabinet approving the Order in Council.
3. We recommend that the proposal be submitted directly to Cabinet to ensure the relief is timely for those affected taxpayers.
4. The Order would give Inland Revenue flexibility to allow affected taxpayers to pay their tax obligations on a later day, other than that required by the Inland Revenue Acts, without incurring UOMI.

### **Request from Federated Farmers New Zealand for tax payment date flexibility**

5. Inland Revenue has been approached by Federated Farmers of New Zealand (on 27 July 2022) requesting some flexibility for due tax payment dates for rural and isolated communities. Federated Farmers note that the unusual sequencing of weather fronts for a prolonged period is creating stress particularly for primary industry communities in Northland, Gisborne district, Wairoa district, Canterbury, and Otago. These communities have, over the last fortnight been affected by flooding, high winds, and infrastructure disruptions, such as power and road outages. For example, Canterbury is said to have recorded more rain in July since records began.
6. The combination of the last fortnight's weather fronts has resulted in flooding and disruption which has significantly adversely affected some taxpayers' ability to meet their tax obligations. For example, PAYE payments, and FBT quarterly returns were due on 20 July. GST returns for taxpayers with taxable periods ending June were due on 28 July. Finally, some taxpayers would have had provisional tax payments due on 28 July.
7. Without relief, the late payment of these tax types results in the automatic statutory imposition of UOMI.
8. The current rate of interest on underpayments of tax is 7.28 percent.

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<sup>1</sup> An emergency event for the purpose of the Inland Revenue Acts is different from an emergency event declared under the Civil Defence Emergency Management Framework. The Order discussed in this report deals with provision of tax relief for taxpayers affected by the series of severe weather fronts that affected New Zealand between 11 July and 31 July 2022.

**The case for providing UOMI relief**

9. The Tax Administration Act 1994<sup>2</sup> provides for the making of an Order in Council to allow Inland Revenue to remit UOMI when:
  - 9.1 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;
  - 9.2 this non-payment results in the imposition of UOMI; and
  - 9.3 the taxpayer is a member of a class of persons eligible for remission of UOMI if the Order in Council declaring the emergency event describes such a class of persons.
10. The practical effect of UOMI remission is that it allows affected taxpayers covered by the scope of the Order to focus on recovering from the event rather than on their tax affairs. Last year the statutory test for when an emergency event could be declared changed from considering whether taxpayers were "physically prevented" from paying tax, to whether the taxpayers have been "significantly adversely affected". This change aligns the test for UOMI relief with the tests that were used in response to COVID-19, and allows for consideration of a wider range of factors that otherwise prevent taxpayers from paying tax by the statutory due dates.
11. We have discussed the request from Federated Farmers with the Ministry for Primary Industries (MPI).
12. MPI support the tax relief measure recommended in this report, and note the following:
  - 12.1 While there has been a series of severe weather fronts that have crossed New Zealand in July, they have not met the threshold for a response under the Primary Sector Recovery Policy administered by the Ministry of Primary Industries.
  - 12.2 MPI are continuing to assess the impact of these weather events on rural communities across New Zealand.
  - 12.3 Southern regions, such as South Canterbury and North Otago are currently under coverage of an adverse event declaration until October 2022 in response to the drought conditions that until recently existed. (We consider that this declaration made in March 2022 cannot be used to support the case for interest remission under the Tax Administration Act as it was for a drought, an event that did not prevent taxpayers from meeting their tax obligations.)
13. In support for providing interest remission relief, Federated Farmers have voiced the following concerns for those communities affected by the weather from the last fortnight:

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[REDACTED]

[REDACTED]

[REDACTED]

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<sup>2</sup> Section 183ABA refers.

**Suggested response**

14. It is unusual for Inland Revenue to recommend a tax relief Order ahead of, or in the absence of, a formal declaration of an adverse event either under MPI's Primary Sector Relief Policy, or a civil defence emergency – such as an earthquake.<sup>3</sup> However, we consider from a tax perspective that the totality of the various severe weather fronts since 11 July to 31 July and the wide impacts those fronts have had on all of New Zealand warrants a tax relief response. Our recommendation is based on:
  - 14.1 MPI's support for Inland Revenue's response,
  - 14.2 The recent rainfall from 11 July to 31 July in affected areas has either broken regional records, or has been well-above regional averages, and
  - 14.3 Given the number of regions affected, there are administrative efficiencies if an Order is made.
15. The response would focus on UOMI relief in relation to the payment dates for PAYE/FBT, due 20 July, and GST, due 28 July. The relief would also apply to missed provisional tax payments due 28 July. The recommended Order would also engage Inland Revenue's discretionary relief for remitting penalties for late filing and payment.
16. The proposed Order would describe the emergency event as being the series of weather fronts that crossed New Zealand between 11 July and 31 July 2022. Relief would, however, be restricted to taxpayers who have been significantly adversely affected in the Northland, Gisborne district, Wairoa district, Canterbury, and Otago regions.
17. The proposed Order gives affected taxpayers certainty (assuming timeliness) and allows Inland Revenue to respond to a "class of persons". This ensures an efficient response for those communities. To ensure the relief is timely, we recommend that the attached paper be referred direct to Cabinet for its meeting on 8 August 2022. A later date for making the Order would reduce the overall benefit of the proposed relief measure.
18. Under the proposed Order, affected taxpayers would have up to two months to seek remission of UOMI on any underpayments of tax.
19. If you do not agree with our suggested approach, taxpayers would still be able to seek remission of late payment and late filing penalties (but not interest remission). Decisions would be made on a case-by-case basis and taxpayers would need to prove hardship.

**Comment**

20. We consider an Order would allow Inland Revenue to best use its resources in determining where tax relief should be directed at and applying Inland Revenue's existing relief discretions. While the main beneficiaries of the Order are expected to be those in rural and isolated communities, it is likely that other taxpayers in those regions will also benefit. For example, in cases where there has been urban and suburban flooding in Christchurch, Timaru, and Dunedin that has significantly adversely affected tax compliance.
21. As noted earlier, in the absence of the Order, some discretions can be exercised, but Inland Revenue would need to consider such requests on a case-by-case basis.

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<sup>3</sup> For example, an UOMI remission relief Order was made in response to the Hawke's Bay gastroenteritis outbreak in 2016, which was neither an adverse event, or a civil defence emergency.

**Administrative implications**

22. Notwithstanding that PAYE/FBT payments were due on 20 July, and GST and provisional payments were due 28 July, Inland Revenue has not detected a perceptible uplift in queries from taxpayers seeking relief as a result of being affected by the recent weather events. This is not surprising as we have been informed by Chartered Accountants Australia and New Zealand in respect of the respective emergency responses last year (2021) for the floods in Canterbury, and later for the top of the South Island, that taxpayers in these stressful circumstances often do not consider their tax obligations until after other priority tasks have been attended to.
23. The proposed Order in Council does not have any implications for Inland Revenue's technology systems.

**Revenue implications**

24. 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 Northland, Gisborne district, Wairoa district, Canterbury, and Otago regions will not affect existing fiscal baselines.

**Consultation**

25. The Treasury and the Ministry for Primary Industries have been consulted as part of the preparation of this report and concur with its recommendation. MPI support the proposed tax relief measure recommended in this report.
26. We have also consulted with Federated Farmers New Zealand. If you agree to the recommendations in this report, we will inform Federated Farmers and Chartered Accountants Australia and New Zealand about the proposed Order in Council, following Cabinet's consideration on 8 August 2022.

**Next steps**

27. If you agree to the recommendations in this report, we recommend you approve and lodge the attached paper for Cabinet for its meeting on 8 August 2022. For that paper to be considered at that meeting, it will need to be lodged with Cabinet office by 10am, Thursday, 4 August 2022. 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 resources.
28. A copy of this report and attached Cabinet paper should be referred to the Minister of Finance and the Minister for Rural Communities for their information.

**Recommended action**

We recommend that you:

- (a) **Agree** to an Order in Council declaring the recent weather systems that crossed New Zealand from 11 July to 31 July 2022 to be an emergency event for UOMI relief purposes.

Agree/Not agreed

**In Confidence**

- (b) **Agree** that the class of taxpayer who would be eligible to receive relief under the Order in recommendation (a) would be taxpayers in the Northland, Gisborne district, Wairoa district, Canterbury, and Otago regions that were significantly adversely affected from making a payment of tax by the statutory due date.

Agree/Not agreed

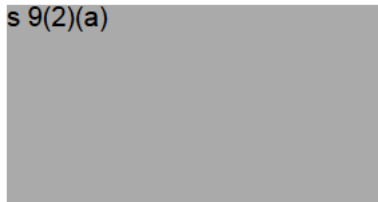
- (c) If you agree to recommendations (a) and (b), **approve** and **lodge** the attached paper to Cabinet on or before 10am, Thursday, 4 August 2022.

Approved and lodged/Not approved

- (d) **Refer** a copy of this report and the attached Cabinet paper to the Minister of Finance and the Minister for Rural Communities.

Referred/Not referred

s 9(2)(a)



**Brandon Sloan**

Principal Policy Advisor

Policy and Regulatory Stewardship

**Hon David Parker**

Minister of Revenue

/ /2022