

In confidence

Office of the Minister of Revenue

Chair, Cabinet

## **Tax Administration (July Adverse Weather Event) 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 a series of severe weather fronts that crossed New Zealand between 11 July and 31 July 2022. Allowing Inland Revenue to remit this interest requires an Order in Council.

### **Policy**

- 2 New Zealand has experienced an unusual sequence of severe weather fronts, with regions experiencing record-breaking, or well-above average, levels of rainfall between 11 July and 31 July. The cumulative effect of these fronts has resulted in flooding and disruption in a number of regions which has significantly adversely affected the ability of some taxpayers to meet their tax obligations, including filing, and paying tax on time.
- 3 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.
- 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 significantly adversely affects a taxpayer from paying an amount of tax on time, or make an accurate forecast of provisional tax;
  - 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 While 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, my officials have advised that cumulative effects of the recent unsettled weather systems have been disruptive to a number of communities in Northland, Gisborne District, Wairoa District, Canterbury, Otago regions. These weather-related disruptions have affected some taxpayers from making their tax payments for PAYE and FBT, which was due on

20 July, and GST, which was due on 28 July. Some provisional taxpayers also had instalment payments due on 28 July.

- 6 My officials consider that for taxpayers in these affected communities, the conditions for interest remission relief contemplated by the Tax Administration Act have been met. An Order in Council permitting the remission of interest on underpaid tax would also engage Inland Revenue's discretionary relief for remitting penalties for late filing and payment.
- 7 The practical effect of interest 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 immediate tax affairs.
- 8 I consider an Order also allows Inland Revenue to best use its resources in terms of specifying where tax relief should be directed at, and applying Inland Revenue's existing relief discretions.
- 9 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 recent severe weather fronts. The event is defined as the severe weather fronts that crossed New Zealand from 11 July to 31 July 2022. Relief under the Order is directed at communities in Northland, Gisborne district, Wairoa district, Canterbury, and Otago. The Order will commence on its notification in the *Gazette* and will expire on 30 September 2022.

### Timing and 28-day rule

- 10 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

- 11 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.

- 12 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**

- 13 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 (2020).

## **Certification by Parliamentary Counsel**

- 14 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**

- 15 The Treasury's Regulatory Impact Analysis team has determined that this proposal 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**

- 16 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**

- 17 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**

- 18 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**

- 19 Inland Revenue officials have consulted with the Treasury and the Ministry for Primary Industries. They agree with the proposal in this paper. Federated Farmers were also consulted and agree with 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 July Adverse Weather 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 (July Adverse Weather Event) 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