

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

Tax Administration (COVID-19 Response Variations) Order 2022**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 2023).
- 2 It also seeks the Committee's agreement to submit the Tax Administration (COVID-19 Response Variations) Order 2022, 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 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 This power was extended from 1 October 2021 to 30 September 2022 to enable the Commissioner to act quickly in the event taxpayers are further impacted by COVID-19.
- 7 This Order in Council extends the measure for a further year (from 1 October 2022 to 30 September 2023). This is necessary given the continued impact of COVID-19 and the threat of new variants in the future.

- 8 To implement this proposal, the Parliamentary Counsel Office has drafted the Tax Administration (COVID-19 Response Variations) Order 2022. 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.

Financial Implications

- 9 The fiscal costs for the administrative flexibility measure 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.

Timing and 28-Day Rule

- 10 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 2023) 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

- 11 The Order complies with:
- 11.1 the principles of the Treaty of Waitangi;
 - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 11.3 the principles and guidelines set out in the Privacy Act 2020;
 - 11.4 relevant international standards and obligations; and
 - 11.5 the Legislation Guidelines, which are maintained by the Legislation Design and Advisory Committee.
- 12 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.
- 13 I consider that the discretionary power should be extended as it is necessary given the continued impact of COVID-19 and the threat of new variants. I consider the statutory requisites have been met.

Regulations Review Committee

- 14 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

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

Impact Analysis

- 16 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 2023) 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

- 17 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

- 18 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

- 19 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 from 1 October 2022 to 30 September 2023;
- 2 note that the Tax Administration (COVID-19 Response Variations) Order 2022 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 2022.

Authorised for lodgement

Hon David Parker

Minister of Revenue