

Hon David Parker, Minister of Revenue

Information Release

Tax Administration (COVID-19 Response Variations) Order 2022

October 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-leg-22-sub-0140>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2022/328	Tax policy report	Extending the Commissioner's COVID-19 administrative flexibility	28 June 2022
2	IR2022/351	Tax policy report	Draft Cabinet Paper: Tax Administration (COVID-19 Variations) Order 2022	20 July 2022
3	LEG-22-SUB-0140	Cabinet paper	Tax Administration (COVID-19 Response Variations) Order 2022	25 August 2022
4	LEG-22-MIN-0140	Minute	Tax Administration (COVID-19 Response Variations) Order 2022	29 August 2022

Additional information

The Cabinet paper was considered by the Cabinet Legislation Committee on 25 August 2022 and confirmed by Cabinet on 29 August 2022.

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 2022¹

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

Accessibility

Inland Revenue can provide an alternate HTML version of this material if requested. Please cite this document's title, website address, or PDF file name when you email a request to policy.webmaster@ird.govt.nz

¹ <https://www.legislation.govt.nz/regulation/public/2022/0245/latest/LMS736490.html>

Copyright and licensing

Cabinet material and advice to Ministers from the Inland Revenue Department and other agencies are © Crown copyright but are licensed for re-use under the Creative Commons Attribution 4.0 International (CC BY 4.0) licence (<https://creativecommons.org/licenses/by/4.0/>).





POLICY AND REGULATORY STEWARDSHIP

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

Date:	28 June 2022	Priority:	Medium
Security level:	In Confidence	Report number:	IR2022/328

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to extend the COVID-19 administrative flexibility measure for one year	19 July 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
Thomas Allen	Policy Lead (acting), Business and Entities.	s 9(2)(a)
Natisha Jones	Policy Advisor, Tax Administration.	s 9(2)(a)

28 June 2022

Minister of Revenue

Extending the Commissioner's COVID-19 administrative flexibility

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 for one year, via an Order in Council.

Background

2. The discretionary power 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. This discretionary power was introduced on 30 April 2020 as part of a range of response measures to COVID-19.¹ The power 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. This power was extended from 1 October 2021 to 30 September 2022. Officials recommended this initial extension to enable the Commissioner to respond quickly in the event taxpayers are further impacted by COVID-19 (IR2021/303 refers).
4. The purpose of the power is to provide 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, six variations in 2021 and 18 variations in 2022. Requests for additional variations would be declined if they are able to be resolved using the Commissioner's care and management powers.
8. Generally, variations are targeted and time limited. For example, a variation published on 23 June 2022 extended the due date for filing statements of R&D loss

¹ The *COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020* inserted the discretionary power into the *Tax Administration Act 1994*.

tax credits and R&D repayment tax from 1 April 2022 until 31 August 2022. The variation is 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.

An extension

9. The discretionary power may be extended by Order in Council, on 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.
10. We recommend the power be extended for another year from 1 October 2022 to 30 September 2023. We think it is necessary given the continued impact of COVID-19 and the threat of new variants in the future.
11. Although there is no longer such pressing urgency for variations, the continued impact of COVID-19 on taxpayer's compliance obligations remains, demonstrated through the Commissioner recently issuing a variation on 23 June 2022. Retaining the power also ensures the Commissioner will be able to respond quickly in the event of future outbreaks and/or lockdowns which may impact taxpayer's ability to meet their obligations.

Administrative implications

12. 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

13. 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.
14. 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.
15. 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

16. Treasury has been consulted on this report.

Next steps

17. 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.
18. 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.
19. 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 on 25 August, or a waiver to the 28-day rule must be obtained.

Recommended action

We recommend that you:


1. **agree** to extend the COVID-19 administrative flexibility measure for one year (to 30 September 2023).

Agreed/Not agreed
2. **note** the fiscal impact of the decision is unable to be quantified but is likely to be minor.

Noted
3. **authorise** the Parliamentary Counsel office to draft an Order in Council to extend the Commissioner's discretionary power.

Authorise/Not authorised

s 9(2)(a)



Thomas Allen
Policy Lead (acting)
Policy and Regulatory Stewardship

Hon David Parker
Minister of Revenue
/ /2022



POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Draft Cabinet paper: Tax Administration (COVID-19 Variations) Order 2022**

Date:	20 July 2022	Priority:	Medium
Security level:	In Confidence	Report number:	IR2022/351

Action sought

	Action sought	Deadline
Minister of Revenue	<p>Authorise and lodge the attached Cabinet Legislation Committee paper by 18 August for your consideration at LEG on 25 August 2022</p> <p>Agree to the recommendation</p>	3 August 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
Thomas Allen	Principal Advisor	s 9(2)(a)
Natisha Jones	Policy Advisor	s 9(2)(a)

20 July 2022

Minister of Revenue

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

Summary

1. This report asks you to consider and authorise the lodgement of the attached draft Cabinet Legislation Committee (LEG) paper.
2. 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 by one year.

Context and Background

3. You previously agreed to extend the COVID-19 administrative flexibility measure by one year (to 30 September 2023), and for officials to instruct the Parliamentary Counsel Office to draft an Order in Council to give effect to this change (IR2022/328 refers).
4. 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.
5. 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. The measure was extended from 30 September 2021 to 30 September 2022 to enable the Commissioner to act quickly in the event taxpayers are further impacted by COVID-19. We recommended the measure be extended for a further year given the continued impact of COVID-19 and the threat of new variants.
6. The Parliamentary Counsel Office are currently drafting the Tax Administration (COVID-19 Response Variations) Order 2022 (Order in Council). Officials have prepared a LEG paper for your consideration and, if you agree, for lodgement to the Cabinet Office by 18 August 2022, for consideration at the LEG meeting of 25 August 2022.

Fiscal implications

7. 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 (IR2022/328 refers). Any administrative costs of implementing the change will be accommodated within existing processes for assessing and implementing COVID-19 variations.

Consultation

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

Next steps

9. If you agree, the Parliamentary Counsel Office will provide the Cabinet Office with the Order in Council.
10. If you are comfortable with the draft LEG paper, please authorise and lodge with the Cabinet Office by 10am Thursday 18 August 2022.
11. Subject to your agreement, the LEG paper will be considered at the LEG meeting of Thursday 25 August 2022 to extend the power.
12. 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

We recommend that you:


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 10am 18 August 2022.

Authorise

14. **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

s 9(2)(a)



Thomas Allen

Principal Advisor – Tax Administration
Policy and Regulatory Stewardship

Hon David Parker

Minister of Revenue

/ /2022

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



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Tax Administration (COVID-19 Response Variations) Order 2022

Portfolio Revenue

On 25 August 2022, the Cabinet Legislation Committee:

- 1 **noted** that in April 2020, Cabinet agreed to amend the Tax Administration Act 1994 to provide flexibility to Inland Revenue to modify timeframes or procedural requirements for taxpayers who are impacted by COVID-19 [CAB-20-MIN-0165];
- 2 **noted** that in August 2021, the Cabinet Business Committee agreed to a one year extension (to 30 September 2022) of the Commissioner of Inland Revenue's administrative flexibility measure under section 61 of the Tax Administration Act [CBC-21-MIN-0076];
- 3 **agreed** to the extension of the Commissioner of Inland Revenue's administrative flexibility measures from 1 October 2022 to 30 September 2023;
- 4 **noted** that the Tax Administration (COVID-19 Response Variations) Order 2022 gives effect to the decision referred to in paragraph 3 above;
- 5 **authorised** the submission to the Executive Council of the Tax Administration (COVID-19 Response Variations) Order 2022 [PCO 24935/3.0].

Rebecca Davies
Committee Secretary

Present:

Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Michael Wood (Chair)
Dr Duncan Webb, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG