

Hon Dr Deborah Russell, Associate Minister of Revenue

Information Release

Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023

September 2023

Availability

This information release is available on Inland Revenue's tax policy website at <https://taxpolicy.ird.govt.nz/publications/2023/2023-ir-cab-leg-23-sub-0129>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2023/194	Policy Report	Increase in FBT prescribed rate of interest	27 June 2023
2	LEG-23-SUB-0129	Cabinet Paper	Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023	27 July 2023
3	LEG-23-MIN-0129	Cabinet Minute	Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023	27 July 2023

Additional information

The Cabinet paper was considered by the Cabinet Legislation Committee on 27 July 2023 and confirmed by Cabinet on 31 July 2023.

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

- Order in Council - Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023

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.

Section of the Act under which information was withheld:

- 9(2)(a) to protect the privacy of natural persons, including deceased people

Accessibility

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POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Increase in FBT prescribed rate of interest

Date:	27 June 2023	Priority:	Medium
Security level:	In Confidence	Report number:	IR2023/194

Action sought

	Action sought	Deadline
Minister of Finance	Agree to adjust the FBT prescribed rate of interest as set out in the report.	20 July 2023
Associate Minister of Revenue	Agree to adjust the FBT prescribed rate of interest as set out in the report. Sign and refer the attached paper to the Cabinet Office for consideration at the LEG meeting on 27 July 2023.	20 July 2023

Contact for telephone discussion (if required)

Name	Position	Telephone
Paul Fulton	Principal Policy Advisor	s 9(2)(a)
Hannah Simmonds	Policy Advisor	s 9(2)(a)

27 June 2023

Minister of Finance
Associate Minister of Revenue

Increase in FBT prescribed rate of interest

Purpose

1. This report seeks your agreement to raise the prescribed interest rate used to calculate fringe benefit tax (FBT) on low-interest loans provided by employers to employees from 7.89% to 8.41%. This change is required to align the rate with current market interest rates. The new rate should apply from the quarter beginning 1 October 2023.
2. An Order in Council is required to make this change. Therefore, this report also seeks your approval for the Parliamentary Counsel Office (PCO) to draft an Order in Council to raise the rate. As changes to the FBT prescribed interest rate have become a routine matter, we consider that your approval is sufficient for PCO to draft the Order. PCO can provide the Order in Council directly to Cabinet Office.

Background

3. The FBT rules tax non-cash benefits provided to employees. Included in the definition of 'fringe benefit' is any employment-related loan on which the employer is charging a rate of interest that is below the market rate. The interest differential is taxable. A prescribed rate set by regulations is used as a proxy for the market rate of interest, to save employers the compliance costs associated with determining the market rate relevant to loans that they have provided to their employees.
4. The Income Tax Act 2007 permits the making of regulations by Order in Council to set a prescribed rate of interest for the purpose of calculating FBT on low-interest loans. Once a rate is set, it remains the prescribed rate until changed by a subsequent Order in Council.
5. The prescribed interest rate was last changed from 6.71% to 7.89%, effective from the quarter beginning 1 April 2023.

Determination of appropriate prescribed rate

6. The Reserve Bank conducts a survey of first mortgage housing interest rates on the last day of each month, producing a 'floating first mortgage new customer housing rate'. The rate is calculated as the weighted average interest rate for the surveyed institutions, the weightings being based on each institution's share of total lending for housing purposes. This Reserve Bank series is a suitable indication of general market interest rates and is therefore used as the benchmark for setting the FBT prescribed rate.
7. The floating first mortgage new customer housing rate of 8.41% for May 2023 indicates that the current FBT prescribed rate of 7.89% is lower than the prevailing market rate.
8. Longstanding administrative policy has been to adjust the FBT prescribed interest rate when there has been a change in the floating first mortgage new customer

housing rate of 20 basis points or more. We recommend that the rate be adjusted to ensure that there is no long-term misalignment.

Process issues

9. When regulations are made declaring the rate of interest applying to employment-related loans, they apply to quarters starting from a date at least 1 month following the date the regulations were made.
10. The Order in Council should be referred to the Cabinet Office by 20 July 2023 so that it can be considered by the Cabinet Legislation Committee on 27 July 2023. PCO has arranged for the Order in Council to be provided directly to the Cabinet Office.
11. A Cabinet paper recommending that Cabinet approve the Order in Council and authorise its submission to the Executive Council is attached.

Revenue implications

12. Raising the FBT prescribed interest rate to 8.41% will increase the amount of net tax revenue that will be collected over the remainder of the 2023/24 fiscal year by approximately \$0.74 million. The full year impact is estimated to be an increase in tax revenue of \$0.98 million per year for subsequent years.

\$millions increase/(decrease)				
Vote Revenue	2023/24	2024/25	2025/26	2026/27 & out years
FBT revenue	1.030	1.370	1.370	1.370
Company tax	(0.290)	(0.380)	(0.380)	(0.380)
Net revenue	0.740	0.980	0.980	0.980
Impact on operating balance	(0.740)	(0.980)	(0.980)	(0.980)

13. A forecasting adjustment will be necessary to account for the increase in expected FBT revenue. It will not affect the balance of the tax policy work programme scorecard.

Consultation

14. The Treasury has been consulted in the preparation of this report and the attached Cabinet paper.

Recommended action

We recommend that you:

Recommendations	Minister of Finance	Associate Minister of Revenue
a) agree that the FBT prescribed rate of interest for low-interest employment-related loans should be raised to 8.41%, effective from 1 October 2023.	Agreed Not agreed	Agreed Not agreed
b) note that increasing the prescribed rate to 8.41% will result in an increase in revenue of approximately \$0.74 million over the 2023/24 year and \$0.98 million per year over the remaining forecast period.	Noted	Noted
c) agree that the Parliamentary Counsel Office should be instructed to draft an Order in Council to implement the proposed rate change.	Agreed Not agreed	Agreed Not agreed
d) approve and lodge the attached Cabinet paper to the Cabinet Office by 20 July 2023 for consideration by Cabinet Legislation Committee at its meeting on 27 July 2023.	N/A	Approved Not approved

Paul Fulton

Principal Policy Advisor

Hon Grant Robertson

Minister of Finance

/ /2023

Hon Dr. Deborah Russell

Associate Minister of Revenue

/ /2023

In Confidence

Office of the Associate Minister of Revenue

Cabinet Legislation Committee

INCOME TAX (FRINGE BENEFIT TAX, INTEREST ON LOANS) AMENDMENT REGULATIONS (NO 2) 2023

Proposal

- 1 This paper seeks the Cabinet Legislation Committee's agreement to submit an Order in Council introducing the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023 to the Executive Council. The proposal is to increase the FBT prescribed interest rate for low-interest, employment-related loans from 7.89% to 8.41%, in line with an increase in market interest rates.
- 2 Changes to the prescribed interest rate are a routine matter and do not involve a change of policy. The methodology used for setting the rate has been applied consistently since the early 1990s.

Policy

- 3 The fringe benefit tax (FBT) rules tax non-cash benefits provided to employees. Included in the definition of 'fringe benefit' is any employment-related loan on which the employer is charging a rate of interest that is below the market rate. The interest differential is taxable. A prescribed rate set by regulations is used as a proxy for the market rate of interest to save employers the compliance costs associated with determining the market rate relevant to loans that they have provided to their employees.
- 4 The Income Tax Act 2007 ('the Act') allows regulations to be made to set the prescribed rate. Once a rate is set, it remains the prescribed rate of interest until changed by a subsequent Order in Council. The current FBT prescribed rate, which has applied since 1 April 2023, is 7.89%.
- 5 The prescribed rate of interest is based on a Reserve Bank survey of first mortgage housing interest rates on the last day of each month ('floating first mortgage new customer housing rate'). This is calculated as the weighted average interest rate for the surveyed institutions, the weightings being based on each institution's share of total lending for housing purposes. This Reserve Bank series is selected as the benchmark for setting the FBT prescribed rate because it is seen as a good indication of market interest rates.

Cost-of-living implications

- 6 The proposal does not have any direct cost-of-living implications. The higher FBT prescribed rate will increase employees' interest costs for employment-related loans, unless the increase is not passed on to employees in which case businesses will incur a higher FBT charge.

Timing

- 7 The Act provides that when regulations to change the prescribed rate of interest are made, they apply to quarters starting at least one month following the date the regulations were made by the Governor-General by Order in Council. Regulations that reduce the rate may apply for the current quarter if made at least one month before the end of the quarter.
- 8 In accordance with the Act, I recommend that the regulations to raise the rate have effect from 1 October 2023 – the beginning of the next quarter. No waiver of the 28-day rule is required.

Compliance

- 9 The regulations comply with each of the following, where applicable:
- | | | |
|-----|--|----------------|
| 9.1 | the principles of the Treaty of Waitangi | Not applicable |
| 9.2 | the New Zealand Bill of Rights Act 1990 | Not applicable |
| 9.3 | the Human Rights Act 1993 | Not applicable |
| 9.4 | the principles and guidelines set out in the Privacy Act 1993 | Not applicable |
| 9.5 | relevant international standards and obligations | Not applicable |
| 9.6 | the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee | Complies |

Regulations Review Committee

- 10 Officials consider that 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.

Certification by Parliamentary Counsel

- 11 The regulations have been certified by Parliamentary Counsel as being in order for submission to Cabinet.

Impact Analysis

- 12 The proposal is of a minor and mechanical nature and does not substantially alter existing arrangements. Therefore, a regulatory impact assessment is not required.
- 13 The proposal will not increase compliance costs as it is simply a change in the prescribed interest rate.

Use of external resources

- 14 No external resources were used for developing this proposal or in the preparation of this paper.

Publicity

- 15 Inland Revenue will publish an article about these changes in its *Tax Information Bulletin*.

Proactive Release

- 16 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

- 17 The Treasury has been consulted in the preparation of this paper.

Revenue implications

- 18 Raising the prescribed interest rate to 8.41% will increase the amount of FBT that will be collected by approximately \$0.74 million over the 2023/24 year and \$0.98 million per year over the remaining forecast period.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the regulations set the prescribed rate of interest for calculating the taxable benefit of low-interest, employment-related loans;
- 2 **agree** that, consistent with the results of the Reserve Bank's survey for May 2023, the FBT prescribed rate of interest should be raised from 7.89% to 8.41% from the quarter commencing on 1 October 2023;
- 3 **note** the following forecast changes as a result of the decision in recommendation 2, with a corresponding impact on the operating balance and/or net debt (note that some totals do not sum due to rounding):

\$m– increase/(decrease)				
Vote Revenue Minister of Revenue	2023/24	2024/25	2025/26	2026/27 & out years
FBT revenue	1.030	1.370	1.370	1.370
Company tax	(0.290)	(0.380)	(0.380)	(0.380)
Crown Revenue and Receipts: Tax revenue	0.740	0.980	0.980	0.980
Total operating	(0.740)	(0.980)	(0.980)	(0.980)

- 4 **authorise** the submission to the Executive Council of the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023.

Authorised for lodgement

Hon Dr Deborah Russell
Associate 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.

Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023

Portfolio **Revenue**

On 27 July 2023, the Cabinet Legislation Committee:

- 1 **noted** that the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023 set the prescribed rate of interest for calculating the taxable benefit of low-interest, employment-related loans;
- 2 **agreed** that, consistent with the results of the Reserve Bank's survey for May 2023, the fringe benefit tax prescribed rate of interest should be raised from 7.89% to 8.41% from the quarter commencing on 1 October 2023;
- 3 **noted** the following forecast changes as a result of the decision in paragraph 2, with a corresponding impact on the operating balance and/or net debt (note that some totals do not sum due to rounding):

\$m– increase/(decrease)				
Vote Revenue Minister of Revenue	2023/24	2024/25	2025/26	2026/27 & out years
FBT revenue	1.030	1.370	1.370	1.370
Company tax	(0.290)	(0.380)	(0.380)	(0.380)
Crown Revenue and Receipts:				
Tax revenue	0.740	0.980	0.980	0.980
Total operating	(0.740)	(0.980)	(0.980)	(0.980)

- 4 **authorised** the submission to the Executive Council of the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023 [PCO 25680/2.0].

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Andrew Little
Hon David Parker
Hon Kieran McAnulty
Hon Barbara Edmonds
Hon Dr Duncan Webb
Hon Dr Deborah Russell
Tangi Utikere, MP (Chief Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG