

Hon Simon Watts, Minister of Revenue

Information Release

Tax Administration (FamilyBoost Tax Credit – Extension of Dates to File Return of Income) Order 2024

December 2024

Availability

This information release is available on Inland Revenue's tax policy website at <https://www.taxpolicy.ird.govt.nz/publications/2024/ir-leg-24-sub-0240>

Documents in this information release

| # | Reference | Type | Title | Date |
|---|-----------------|-------------------|--|-------------------|
| 1 | IR2024/371 | Tax Policy Report | Tax Policy report: Draft Cabinet paper: Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024 | 20 September 2024 |
| 2 | IR2024/453 | Tax Policy Report | Tax Policy report: Draft Cabinet paper: Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024 | 07 November 2024 |
| 3 | LEG-24-SUB-0240 | Cabinet Paper | Tax Administration (FamilyBoost Tax Credit – Extension of Dates to File Return of Income) Order 2024 | 21 November 2024 |
| 4 | LEG-24-MIN-0240 | Minute | Tax Administration (FamilyBoost Tax Credit – Extension of Dates to File Return of Income) Order 2024 | 21 November 2024 |
| 5 | CAB-24-MIN-0459 | Minute | Report of the Cabinet Legislation Committee: Period ended 22 November 2024 | 25 November 2024 |

Additional information

The Cabinet paper was considered by the Cabinet Legislation Committee on 21 November 2024 and confirmed by Cabinet on 25 November 2024.

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

- Tax Administration (FamilyBoost Tax Credit- Extension of Dates to File a Return of Income) Order 2024

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
- 9(2)(f)(iv) to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- 9(2)(h) to maintain legal professional privilege

Accessibility

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Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Draft Cabinet paper: Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024**

| | | | |
|------------------------|-------------------|-----------------------|------------|
| Date: | 20 September 2024 | Priority: | High |
| Security level: | In Confidence | Report number: | IR2024/371 |

Action sought

| | Action sought | Deadline |
|---------------------|--|-------------------|
| Minister of Revenue | Agree to attached draft Cabinet LEG paper for consultation and lodgement Refer to the Minister of Finance | 24 September 2024 |

Contact for telephone discussion (if required)



| Name | Position | Telephone |
|-----------------|--------------------------|------------------|
| Murray Shadbolt | Principal Policy Advisor | s 9(2)(a) |
| Libby Young | Policy Advisor | |

20 September 2024

Minister of Revenue

Draft Cabinet paper: Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024

Purpose and background

1. On 22 August 2024, you agreed to allow a person (or partner) who has filed their relevant tax return late to apply for FamilyBoost, once they have filed. 
s 9(2)(f)(iv) 
2. You also agreed to instruct the Parliamentary Counsel Office (PCO) to draft an Order in Council that provided a temporary solution under section 226 of the Tax Administration Act 1994 (the Act) [IR2024/259 refers]. The Order would treat applicants' tax returns for the past two years as not having been filed late by extending the due date for FamilyBoost purposes, thereby allowing them to receive the FamilyBoost tax credit as intended. The extension has no impact on their due dates for income tax purposes.
3. This report seeks your agreement to the enclosed draft Cabinet paper on the Order in Council for consultation and approval at the Cabinet Legislation Committee.

Timing

4. There are two possible timelines for the Order in Council and supporting Cabinet LEG paper, depending on whether a 28-day waiver for the Order in Council is authorised.

| Key activity | Proposed date |
|------------------------------------|-------------------|
| Ministerial consultation | 24.09 – 8.10.2024 |
| LEG paper submitted | 10.10.2024 |
| LEG meeting | 17.10.2024 |
| Cabinet confirmation | 21.10.2024 |
| Gazetted | 24.10.2024 |
| Commencement with 28-day waiver | 25.10.2024 |
| Commencement without 28-day waiver | 22.11.2024 |

5. Officials advise that the 28-day waiver can apply in these circumstances as allowing FamilyBoost applicants who have filed past tax returns late to still have access to FamilyBoost payment is of benefit to applicants. The Order does not require any action by taxpayers to comply with the Order.

Consultation

6. The Treasury had been informed of the original report seeking drafting of the Order.

Next steps

7. PCO is currently drafting the Order in Council. The draft Cabinet paper includes a highlighted placeholder section relating to PCO's certification of the Order and the Regulations Review Committee. PCO may raise a risk that the Regulations Review Committee may draw the Order to the special attention of the House on the ground that it appears to make an unusual or unexpected use of the power conferred by the Act under which it is made [Standing Order ground 327(2)(c)].
8. This qualification would be because previous reasons to use section 226 of the Act related to adverse weather events or system shutdown periods that meant a taxpayer could not file by the standard time and would be subject to a penalty without the extension. In the situation of FamilyBoost there is no external event preventing a taxpayer from filing on time.
9. Rather, the income test for FamilyBoost is backward looking and relates to past taxpayer filing actions. They could not have been aware that late filing last year or the year before would now deny them access to FamilyBoost. The extension of filing dates by this Order prevents an unintended implicit retrospective penalty applying.
10. Following ministerial consultation on the draft Cabinet paper we will update these parts of the paper with PCO's final position. The paper will be ready to be authorised for lodgement on 10 October once PCO complete drafting the Order. Speaking notes will be provided before the LEG meeting on 17 October.

Recommended action

We recommend that you:

1. **agree** to the contents of this draft Cabinet paper for ministerial consultation and lodgement
Agreed/Not agreed
2. **refer** a copy of this report to the Minister of Finance for their information.
Referred/Not referred

s 9(2)(a)

Murray Shadbolt

Principal Policy Advisor
Policy

Hon Simon Watts

Minister of Revenue
/ /2024



Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Draft Cabinet paper: Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024**

| | | | |
|------------------------|-----------------|-----------------------|------------|
| Date: | 7 November 2024 | Priority: | High |
| Security level: | In Confidence | Report number: | IR2024/453 |

Action sought

| | Action sought | Deadline |
|---------------------|--|-----------------|
| Minister of Revenue | Agree to attached updated draft Cabinet LEG paper for consultation and lodgement Refer to the Minister of Finance | 7 November 2024 |

Contact for telephone discussion (if required)

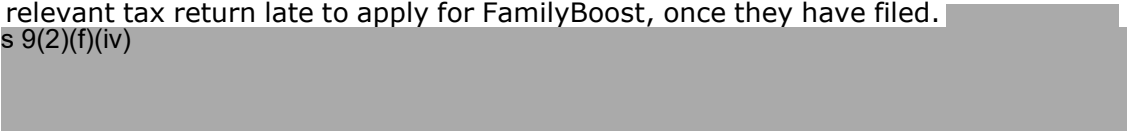
| Name | Position | Telephone |
|-----------------|--------------------------|------------------|
| Murray Shadbolt | Principal Policy Advisor | s 9(2)(a) |
| Libby Young | Policy Advisor | |

7 November 2024

Minister of Revenue

Draft Cabinet paper: Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024

Purpose and background

1. On 22 August 2024, you agreed to allow a person (or partner) who has filed their relevant tax return late to apply for FamilyBoost, once they have filed.  s 9(2)(f)(iv)
2. You also agreed to instruct the Parliamentary Counsel Office (PCO) to draft an Order in Council that provided a temporary solution under section 226 of the Tax Administration Act 1994 (the Act) [IR2024/259 refers]. The Order would treat applicants' tax returns for the past two years as not having been filed late by extending the due date for FamilyBoost purposes, thereby allowing them to receive the FamilyBoost tax credit as intended. The extension has no impact on their due dates for income tax purposes.
3. This report seeks your agreement to the enclosed updated draft Cabinet paper on the Order in Council for consultation and approval at the Cabinet Legislation Committee. Officials sent a previous version of this Cabinet paper to you on September 20 [IR2024/371 refers]. The updated paper reflects recent discussions with PCO on the drafting of the Orders.

Timing

4. The expected timeline for the Order in Council and supporting Cabinet LEG paper is as follows:

| Key activity | Proposed date |
|---------------------------------|-------------------------|
| Ministerial consultation | 07.11.2024 - 13.11.2024 |
| LEG paper submitted | 13.11.2024 |
| LEG meeting | 21.11.2024 |
| Cabinet confirmation | 25.11.2024 |
| Gazetted | 26.11.2024 |
| Commencement with 28-day waiver | 27.11.2024 |

5. Officials advise that the 28-day waiver can apply in these circumstances as allowing FamilyBoost applicants who have filed past tax returns late to still have access to FamilyBoost payment is of benefit to applicants. The Order does not require any action by taxpayers to comply with the Order.

Regulations Review Committee

6. There is a small risk that the Regulations Review Committee may draw the Order to the special attention of the House on the ground that it appears to make an unusual or unexpected use of the power conferred by the enactment under which it is made (Standing Order ground 327(2)(c)). Officials consider the risk is low and the use is justifiable.
7. s 9(2)(h) [REDACTED] PCO agree but note this usage is unusual as it differs from recent legal applications. They have mentioned the risk in paragraph 6 but consider the risk is low enough that they would not raise it as a qualification on the making of the Order.

Consultation

8. The Treasury had been informed of the original report seeking drafting of the Order.

Next steps

9. Following ministerial consultation on the draft Cabinet paper it will be authorised for lodgement on 13 November. Speaking notes will be provided on the November 14 before the LEG meeting.
10. s 9(2)(f)(iv) [REDACTED]

Recommended action

We recommend that you:

1. **agree** to the contents of this draft Cabinet paper for ministerial consultation and lodgement
Agreed/Not agreed
2. **refer** a copy of this report to the Minister of Finance for their information.
Referred/Not referred

s 9(2)(a) [REDACTED]

Murray Shadbolt

Principal Policy Advisor
Policy

Hon Simon Watts

Minister of Revenue
/ /2024

IN CONFIDENCE**In Confidence**

Office of the Minister for Revenue

Chair, Cabinet Legislation Committee

Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024

Proposal

- 1 This paper seeks Cabinet authorisation for the submission to the Executive Council of the attached Order in Council. The first Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024 will modify the FamilyBoost legislation, allowing FamilyBoost applicants who were late filing tax returns in previous tax years to access the FamilyBoost payment, once they have filed the tax return required for the quarter they are applying for.

Policy

- 2 The FamilyBoost tax credit legislation was passed under urgency as part of the wider Budget 2024 tax changes. The payment will support low-to-middle income families via quarterly payments linked to a portion of their early childhood education costs. The first payment can be claimed by parents and caregivers from 1 October 2024, for the period 1 July – 30 September 2024 [CAB-24-MIN-0089].
- 3 The maximum amount that can be claimed is reduced once quarterly household income exceeds \$35,000 (equivalent to \$140,000 a year). This requires Inland Revenue to determine a household's income from their tax returns and end of tax year assessments, and for people to file those returns where required. As such, FamilyBoost would not be available if a person or their partner refused to file a tax return. Currently, the FamilyBoost legislation overreaches, requiring applicants to not only have filed their most recent tax return, but to have filed it on time. Consequently, those who filed their tax return late for one or both of the last two years are unable to apply for a FamilyBoost tax credit despite providing the information Inland Revenue needs to calculate their payment. The same situation applies to the person's partner. This is not the intended outcome. Inland Revenue estimate that approximately 980 families may be impacted by this issue per year.
- 4 The intended outcome is to allow those who have filed their tax return - required for the quarter they are applying for - to access FamilyBoost. This is regardless of whether this tax return was supplied on time or late. The key requirement is to have the family's income information to determine if they can claim the maximum or a lesser amount. [REDACTED]
s 9(2)(f)(iv) [REDACTED]
[REDACTED] FamilyBoost applications would then only be disallowed where a required return of tax remains outstanding.

5

s 9(2)(f)(iv)

6

This Order provides a future date for people to have filed the tax return by, for the purpose of applying for FamilyBoost. If this Order is not agreed to, parents who had previously filed late in the last two tax years, before FamilyBoost legislation had even been introduced, would not legally be able to claim their FamilyBoost payment

s 9(2)(f)(iv)

Timing and 28-day rule

7

The amendment should come into force as soon as practicable to allow all FamilyBoost applicants to receive their tax credit payments as intended. The Order requires no new action to be taken by taxpayers.

8

It may disadvantage FamilyBoost applicants to wait an extra 28 days before modifying the FamilyBoost legislation in line with its intended outcome. Therefore, I recommend that the 28-day rule be waived to allow the coming into force of this order by the commencement date of 27 November 2024.

Compliance

9

The order complies with the following:

9.1 the principles of the Treaty of Waitangi;

9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

9.3 the principles and guidelines set out in the Privacy Act 2020;

9.4 relevant international standards and obligations;

9.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

10

There is a small risk that the Regulations Review Committee may draw the Order to the special attention of the House on the ground that it appears to make an unusual or unexpected use of the power conferred by the enactment under which it is made (Standing Order ground 327(2)(c)). Officials consider the risk is low.

11

Recent Orders made under section 226 of the Tax Administration Act 1994 have been made when an external event has prevented a taxpayer from filing by a standard due date, such as a result of an adverse event or system shutdown. In this situation there has been no external event that prevented a taxpayer from filing by the due dates. However, the legislation does not require an external event to have occurred to use this provision.

Certification by Parliamentary Counsel

- 12 The Parliamentary Counsel Office has certified that the attached Order in Council is in order for submission to Cabinet. The Parliamentary Counsel Office has noted in a qualified certificate that a waiver of the 28-day rule needs to be granted.

Impact Analysis

- 13 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals and not-for-profit entities.
- 14 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

- 15 No steps will be taken to publicise the effect of this Order in Council specifically beyond the gazette notice. There were general FamilyBoost public communications during September and October concerning the registration and claims process.

Next steps

- 16 s 9(2)(f)(iv)

Proactive release

- 17 I propose to proactively release this Cabinet paper and associated minutes within 30 working days of Cabinet making final decisions, subject to the provisions of the Official Information Act 1982.

Consultation

- 18 The Treasury has been informed of this paper.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 20 March 2024, the Cabinet Economic Policy Committee agreed to make FamilyBoost tax credit payments from 1 October 2024 [ECO-24-MIN-0033 refers];
- 2 **note** that the first Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024 will allow parents who have filed late for previous tax years to be able to apply for FamilyBoost and give effect to the decision referred to in paragraph 1 above;
- 3 **note** that a waiver of the 28-day rule is sought:
 - 3.1 so that the regulations can come into force as soon as possible;
 - 3.2 on the grounds that this change will allow individuals to receive their FamilyBoost payment as intended and there is no reason to delay payments;
- 4 **agree** to waive the 28-day rule so that the regulations can come into force on 27 November 2024;
- 5 **authorise** the submission to the Executive Council of the Tax Administration (FamilyBoost tax credit: extension of date to file a tax return) Order 2024;

Authorised for lodgement

Hon Simon Watts

Minister for 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 (FamilyBoost Tax Credit—Extension of Dates to File Return of Income) Order 2024

Portfolio Revenue

On 21 November 2024, the Cabinet Legislation Committee:

- 1 **noted** that in March 2024, the Cabinet Economic Policy Committee agreed to make FamilyBoost tax credit payments from 1 October 2024 [ECO-24-MIN-0033];
- 2 **noted** that the first Tax Administration (FamilyBoost Tax Credit – Extension of Dates to File Return of Income) Order 2024 (the regulations) will allow parents who have filed late for previous tax years to be able to apply for FamilyBoost, and give effect to the decision referred to in paragraph 1 above;
- 3 **noted** that a waiver of the 28-day rule is sought:
 - 3.1 so that the regulations can come into force as soon as possible;
 - 3.2 on the grounds that this change will allow individuals to receive their FamilyBoost payment as intended and there is no reason to delay payments;
- 4 **agreed** to waive the 28-day rule so that the regulations can come into force on 27 November 2024;
- 5 **authorised** the submission to the Executive Council of the Tax Administration (FamilyBoost Tax Credit-Extension of Date to File a Return of Income) Order 2024 [PCO 26696/6.0].

Janine Harvey
Committee Secretary

Present: (see over)



Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 22 November 2024

On 25 November 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 22 November 2024:

| | | |
|--------------|------------|------------|
| Not in scope | [Redacted] | [Redacted] |
| [Redacted] | [Redacted] | [Redacted] |
| [Redacted] | [Redacted] | [Redacted] |
| [Redacted] | [Redacted] | [Redacted] |
| [Redacted] | [Redacted] | [Redacted] |
| [Redacted] | [Redacted] | [Redacted] |
| [Redacted] | [Redacted] | [Redacted] |
| [Redacted] | [Redacted] | [Redacted] |
| [Redacted] | [Redacted] | [Redacted] |

Not in scope

LEG-24-MIN-0240 **Tax Administration (FamilyBoost Tax Credit—
Extension of Dates to File Return of Income)
Order 2024** CONFIRMED
Portfolio: Revenue

Not in scope

Rachel Hayward
Secretary of the Cabinet