

# Hon Stuart Nash, Minister of Revenue

## Information Release

### Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2019

December 2019

#### Availability

This information release is available on Inland Revenue's Tax Policy website at <http://taxpolicy.ird.govt.nz/publications/2019-ir-cab-leg-19-sub-0180/overview>.

#### Documents in this information release

1. IR2019/575 – Tax policy report: Decrease in FBT prescribed rate of interest (21 October 2019)
2. LEG-19-SUB-0180 – Cabinet paper: Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2019 (19 November 2019)
3. LEG-19-MIN-0180 – Minute: Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2019 (19 November 2019)

#### Additional information

The Cabinet paper was considered by the Cabinet Legislation Committee on 19 November 2019 and confirmed by Cabinet on 25 November 2019.

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

- Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2019.

#### 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

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## POLICY AND STRATEGY

**Tax policy report: Decrease in FBT prescribed rate of interest**

<b>Date:</b>	21 October 2019	<b>Priority:</b>	Medium
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2019/575

### Action sought

	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Agree</b> to recommendations <b>Note</b> the contents of this report	10am, Thursday 14 November

### Contact for telephone discussion (if required)

<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Paul Fulton	Principal Policy Advisor	s 9(2)(a)
s 9(2)(a)	Policy Advisor	

21 October 2019

Minister of Revenue

## **Decrease in FBT prescribed rate of interest**

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### **Purpose**

1. This report seeks your agreement to lower the prescribed interest rate used to calculate fringe benefit tax (FBT) on low-interest loans provided by employers to employees from 5.77% to 5.26%. This change is required to align the rate with current market interest rates. Based on longstanding practice, the new rate – being taxpayer favourable – should apply from the beginning of the current quarter (1 October 2019).
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 lower 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.
3. To enable the new rate to apply from 1 October 2019, the Order in Council must be made – and be in force – by the end of November. PCO can provide the Order in Council directly to Cabinet Office.

### **Background**

4. 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.
5. 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.
6. The prescribed interest rate was last changed from 5.99% to 5.77% from the quarter beginning 1 January 2016, following a review of the rate in February 2016.

### **Determination of appropriate prescribed rate**

7. 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.
8. The floating first mortgage new customer housing rate of 5.26% for August and September 2019 indicates that the current FBT prescribed rate of 5.77% is higher than the prevailing market rate. 5.26% could still be perceived as a high borrowing

rate in the context of the current low-interest environment, but this figure is consistent with floating rates offered by major banks.

9. 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 this quarter to ensure that there is no long-term misalignment.
10. If you agree that the prescribed interest rate should be decreased, the change should take effect from the start of the current quarter (1 October 2019).
11. The overall effect of the proposed change in the prescribed interest rate is that the rate for the quarter beginning 1 October 2019 will decrease from 5.77% to 5.26%.

### Process issues

12. 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. However, regulations that reduce the prescribed rate may apply to a quarter if made at least 1 month before the end of that quarter. If the prescribed interest rate is to be lowered from the start of the current quarter (1 October 2019), an Order in Council will therefore need to be made before 1 December 2019.
13. To meet this timetable, the Order in Council should be referred to the Cabinet Office by 10am on Thursday 14 November, so that it can be considered by Cabinet Legislation Committee on 19 November 2019. PCO has arranged for the Order in Council to be provided directly to the Cabinet Office.
14. A Cabinet paper recommending that Cabinet approve the Order in Council and authorise its submission to the Executive Council is attached. We recommend that you lodge the Cabinet paper with the Cabinet Office by 10am on Thursday 14 November 2019.
15. A waiver of the 28-day rule is requested so that the regulation can come into force the day after its notification in the *Gazette* on 28 November 2019. This waiver is requested on the grounds that early commencement is necessary to enable the lower rate to apply from the beginning of this quarter, and early commencement will only confer a benefit on those affected. A waiver of the 28-day rule has been obtained for previous rate changes.

### Revenue implications

16. Lowering the FBT prescribed interest rate to 5.26% will decrease the amount of FBT that will be collected by approximately \$0.27 million per quarter. This amounts to \$5.16 million over the current forecast period (2019-20 to 2023-24).
17. A forecasting adjustment will be necessary, to account for the decrease in expected FBT revenue. It will not affect the balance of the tax policy work programme scorecard.

### Consultation

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

## Recommended action

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We recommend that you:

19. **agree** that the FBT prescribed rate of interest for low-interest employment-related loans should be lowered to 5.26%, effective from 1 October 2019.  
  
Agreed/Not agreed
20. **note** that decreasing the prescribed rate to 5.26% will result in a decrease in revenue of approximately \$0.27 million per quarter (\$1.08 million per annum), which amounts to \$5.16 million over the current forecast period (2019-20 to 2023-24).  
  
Noted
21. **agree** that the Parliamentary Counsel Office should be instructed to draft an Order in Council to this effect.  
  
Agreed/Not referred

### Paul Fulton

Principal Policy Advisor  
Policy and Strategy

### Hon Stuart Nash

Minister of Revenue  
/ /2019

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

## **INCOME TAX (FRINGE BENEFIT TAX, INTEREST ON LOANS) AMENDMENT REGULATIONS 2019**

### **Proposal**

1. This paper seeks the Cabinet Legislation Committee's agreement to submit an Order in Council amending the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2019 to the Executive Council. The proposal is to lower the FBT prescribed interest rate for low-interest, employment-related loans from 5.77% to 5.26%, in line with a decrease 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 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 from 1 January 2016, is 5.77%.
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.
6. The proposed new FBT rate of 5.26%, despite being 51 basis points lower than the current rate, might still be perceived as a high borrowing rate in the current low-interest environment. However, this figure is consistent with floating rates offered by major banks.

### **Timing and 28-day rule**

7. Lowering the rate is favourable for employers and should apply as soon as possible. I am therefore recommending that the lower rate apply from the beginning of the current quarter, that is, from 1 October 2019. When the prescribed interest rate is reduced, the lower rate is allowed to apply from the start of the quarter in which the change occurs, provided the regulation is made at least a month before the end of that quarter. This means that the new Order in Council has to be made (and be in force) by the end of November.
8. A waiver of the 28-day rule is requested so that the regulation can come into force the day after its notification in the *Gazette* on 28 November 2019. This waiver is requested on the grounds that early commencement is necessary to enable the lower rate to apply from the beginning of this quarter, and early commencement will only confer a benefit on those affected. A waiver of the 28-day rule has been obtained for previous rate changes.

### **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 (2018 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 319.

### **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 statement is not required.
13. The proposal will not increase compliance costs as it is simply a change in the prescribed interest rate.

### **Publicity**

14. I will issue a media statement once the Order in Council is made by the Executive Council.



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

**Proactive Release**

- 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**

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

**Revenue implications**

- Lowering the prescribed interest rate to 5.26% will decrease the amount of FBT that will be collected by approximately \$0.27 million per quarter. This amounts to \$5.16 million over the current forecast period (2018-19 to 2022-23).

**Recommendations**

I recommend that the Cabinet Legislation Committee:

- note** that the regulations set the prescribed rate of interest for calculating the taxable benefit of low-interest, employment-related loans.
- agree** that, consistent with the latest results of the Reserve Bank’s survey, the FBT prescribed rate of interest should be lowered from 5.77% to 5.26% for the quarter which commenced on 1 October 2019.
- note** that lowering the prescribed rate will have the following impact on Crown Revenue:

	\$m, decrease				
<b>Vote Revenue</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23 &amp; Outyears</b>
Decreased FBT revenue	<b>(0.82)</b>	<b>(1.09)</b>	<b>(1.09)</b>	<b>(1.09)</b>	<b>(1.09)</b>

- note** that the change is a forecast change and does not have appropriation implications.
- authorise** the submission to the Executive Council of the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2019.
- note** that a waiver of the 28-day rule is sought on the grounds that early commencement is necessary to enable the lower rate to apply from the start of the current quarter, and will only confer benefits on those affected.
- agree** to waive the 28-day rule so that the regulations can come into force on the day after their notification in the *Gazette*.
- note** that I will issue a press statement announcing the decrease once the Order in Council is made.

Authorised for lodgement

Hon Stuart Nash  
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 2019

**Portfolio**                      **Revenue**

On 19 November 2019, the Cabinet Legislation Committee:

- 1        **noted** that the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2019 set the prescribed rate of interest for calculating the taxable benefit of low-interest, employment-related loans;
- 2        **noted** that, consistent with the latest results of the Reserve Bank's survey, the Fringe Benefit Tax (FBT) prescribed rate of interest should be lowered from 5.77 per cent to 5.26 per cent for the quarter which commenced on 1 October 2019;
- 3        **noted** that lowering the prescribed rate will have the following impact on Crown Revenue:

Vote Revenue	\$m decrease				
	2018/19	2019/20	2020/21	2021/22	2022/23 & Outyears
Decreased FBT revenue	(0.82)	(1.09)	(1.09)	(1.09)	(1.09)

- 4        **noted** that the impact in paragraph 3 is a forecast change and does not have appropriation implications;
- 5        **authorised** the submission to the Executive Council of the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2019 [PCO 22508];
- 6        **noted** that a waiver of the 28-day rule is sought on the grounds that early commencement is necessary to enable the lower rate to apply from the start of the current quarter, and will only confer benefits on those affected;
- 7        **declined** a waiver of the 28-day rule;
- 8        **noted** that the Regulations will come into force 28 days after their notification in the Gazette;

- 9 **noted** that the Minister of Revenue will issue a press statement announcing the decrease once the Regulations are made.

Gerrard Carter  
Committee Secretary

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**Present:**

Hon Chris Hipkins (Chair)  
Hon Andrew Little  
Hon David Parker  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Tracey Martin  
Hon Eugenie Sage  
Michael Wood MP (Senior Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG

**Hard-copy distribution:**

Minister of Revenue