COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Bill

Commentary on taxation amendments in the Bill

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Overview of the Bill

BILL OVERVIEW

This COVID-19 response omnibus Bill introduces taxation and other regulatory related amendments that form part of the Government's response to the impacts of the COVID-19 outbreak.

The measures proposed in the Bill involve changes to income tax, tax administration, primary industries, consumer protection and crown owned entity regulatory requirement measures. This Inland Revenue commentary provides further information on the tax policy proposals in the Bill.

Loss carry-backs

This Bill introduces a tax loss carry-back measure. This would allow businesses that anticipate being in loss in either the 2019–20 or 2020–21 tax year to carry some or all of that loss back to the preceding year where profits were earned.

Loss carry-forwards and carry-backs are intended to prevent systematic over taxation over time. If taxpayers always pay tax when they earn income, but never get relief when they have a loss, they will pay more than the statutory rate of tax over time. Loss carry-backs are one way to address this. The Government has also announced policy changes relating to the loss carry-forward rules, but these are not part of this Bill.

The proposed measure in the Bill is intended as a temporary measure to provide fast cash flow relief for businesses in loss during the period affected by COVID-19. The proposed measure would enable tax refunds for a profit year to be paid before the loss year has finished by enabling taxpayers to estimate the loss for the year and transfer it back to the profit year.

The proposed measure provides for a one-year carry-back. The Government has indicated its intention to develop a permanent loss carry-back mechanism to apply from the 2021–22 tax year. The longer-term regime may be more traditional, such as not allowing a refund before the loss has been established and may have more integrity measures to cover some technical risks. The longer-term regime may provide for a one-year or two-year loss carry-back.

Almost all types of taxpayers – companies, trusts and individuals – would be eligible to carry back losses.

Administrative flexibility for Inland Revenue

The Bill also introduces a proposed new power to give the Commissioner of Inland Revenue the flexibility to quickly provide an extension to due dates, timeframes or modify other procedural requirements for taxpayers who are impacted by COVID-19.

The proposed power could be applied for any due date, timeframe, time period, procedural or administrative requirement across tax or social policy obligations set out in the Revenue Acts and the Unclaimed Money Act 1971.

This power would be limited to an 18-month period which could be extended by Order in Council and to initiatives which are taxpayer friendly.

Tax treatment of payments to New Zealanders stranded overseas

The Ministry of Social Development has established the New Zealanders Stranded Overseas welfare programme for beneficiaries and superannuitants stranded overseas as a result of COVID-19. The Bill proposes a measure ensuring that benefit and pension equivalent payments paid through this programme to people stranded overseas because of COVID-19 continue to have the same tax treatment as their pensions or benefits would be in New Zealand.

Loss carry-backs

LOSS CARRY-BACKS

(Clauses 5, 6, 7, 8, 9, 11, 12, 13, 18, 19)

Summary of proposed amendment

This Bill introduces a temporary tax loss carry-back measure that would allow businesses that are or anticipate being in loss, to carry-back some or all of that loss to the immediately preceding income year.

Application date

The proposed amendment would apply from 15 April 2020.

Key features

The Bill proposes a temporary measure that would apply for losses incurred in the 2019–20 or 2020–21 income years. It would allow for refunds of previously paid tax before the loss year is finished. Taxpayers would generally access this provision by changing their estimated provisional tax. The deadline for re-estimating provisional tax would be extended from the final instalment date until the date the tax return is due or filed, whichever is the earlier. Taxpayers would be able to choose whether to use this facility.

Almost all types of taxpayers – companies, trusts and individuals – would be eligible to carry back losses. The majority of individuals who are taxed through the PAYE system do not have losses so would be unaffected by this measure but those that operate businesses through partnerships, limited partnerships, and look-through companies would be able to benefit.

Standard late payment use of money interest would apply if the loss carry-back is overestimated. Ownership continuity, grouping, and imputation rules would also apply.

Background

Businesses in New Zealand pay tax on their income when they are profitable while losses are deductible. Under existing tax loss continuity rules, these losses can be carried forward to reduce taxable income in future years.

Loss carry-forwards and carry-backs are intended to prevent systematic over-taxation over time. If taxpayers always pay tax when they earn income, but never get relief when they have a loss, they will pay more than the statutory rate of tax over time. Loss carry-backs are one way to address this. The Government has also announced policy changes relating to the loss carry-forward rules, but these are not part of this Bill.

The economic impacts of COVID-19 have made it more likely that taxpayers will be in loss in the 2019–20 or 2020–21 income years. Carrying a loss forward postpones the benefit of being able to claim losses and means that a taxpayer would still incur a tax liability for previous profitable years. The proposed loss carry-back measure in the Bill is intended to provide fast cash flow relief for businesses in loss during the period affected by COVID-19.

The measure would enable tax refunds to be paid before the loss year has finished and before an income tax return has been filed for the loss year.

The proposed measure is intended to be temporary. The Government has indicated its intention to develop a permanent loss carry-back mechanism to apply from the 2021–22 tax year, which would replace the proposed temporary measure in this Bill.

Detailed analysis

Establishing the proposed loss carry-back involves amendments to the Income Tax Act 2007 and the Tax Administration Act 1994.

The main features of the proposal are set out in clause 9 of the Bill that introduces a new section IZ 8 to the Income Tax Act 2007.

This proposed section introduces the concept of the offset years – the pair of years affected by the carry-back. The first of these years is named the **taxable income year** and the second is named the **net loss year**.

To be eligible to use proposed section IZ 8, a taxpayer must have made, or estimate that they will make, a loss in 2019–20 or 2020–21 – the net loss year. It must also have had taxable income in the previous year – the taxable income year. Losses would only be carried back for one year. This would mean:

- losses from the 2019–20 year could be carried back to the 2018–19 year; and
- losses from the 2020–21 year could be carried back to the 2019–20 year.

Example 1

Armstrong Architects Limited (Armstrong) is a well-known architectural firm based in Christchurch and is known for its innovative designs and earthquake resistant buildings. It has been having a boom in business for the last two years but because most of its current projects are under construction its work has dropped off because of the Level 4 COVID-19 restrictions preventing work on the projects. In the 2019–20 income year it is predicting it will have taxable income of $5.6 million but because it has a number of high fixed costs to cover during the COVID-19 period and has no future projects in the pipeline it anticipates that for the 2020–21 income year it will make a loss of $3.2 million.

Armstrong elects to carry back that anticipated loss to the 2019–20 income year. Armstrong has already paid $1.2 million in provisional tax over the first two provisional tax instalment dates for the 2019–20 income year and was due to pay another $368,000 on 7 May 2020. Armstrong re-estimates its provisional tax for the year to take account of the carry-back loss which will mean its taxable income will only be $2.4 million ($5.6 million − $3.2 million) with the tax liability on that being $672,000 ($2.4 million × 28%). The refund Armstrong will receive is $528,000 ($1,200,000 − $672,000) which will give it funds to meet its ongoing costs.

There are ownership continuity requirements that match those that apply to loss carry-forward provisions. These mean if a company has had an ownership change of more than 49% since the beginning of the profit year, the loss carry-back would not be available, except on a part year basis. This is to prevent the use of losses to eliminate tax on income that was not connected with the loss-making business when it was earned.

Example 2

Buzz Autos Limited (Buzz) is a car dealership specialising in American muscle cars from the 1960s. Being in a very specialised market Buzz relies on steady custom from month-to-month. With the Level 4 lockdown Buzz is struggling to stay afloat. For the 2019–20 income year Buzz estimates that it will have taxable income of $268,000 on which it has already paid $75,040 in tax. Buzz has a standard 31 March balance date.

Collins Cars Limited (Collins) is a car dealership that specialises in American muscle cars from the 1970s. It has been having a great 2019–20 year and its business model has lower fixed costs than Buzz so it has significant cash reserves.

The owner of Collins knows Buzz very well and offers to assist it get through the COVID-19 situation by purchasing 52% of Buzz, which they do on 1 May 2020.

Because of the lack of ability to trade, Buzz is anticipating that for the 2020–21 year they will have a tax loss of $341,000. However, because Buzz has not met the 49% continuity rule it will not be able to carry back that loss to the 2019–20 year. It will, however, be able to carry that portion of the loss arising after 30 April forward to the 2021–22 income year.

The part year continuity rules will allow Buzz to carry back a portion of the 2020–21 loss for the year (from 1 April 2020 to 30 April 2020), which Buzz estimates as $160,000. Buzz will need to meet the requirements to use a part year loss such as preparing part year accounts to the date of the breach in continuity.

The amount that could be carried back would be the smallest of:

- the estimated loss (in 2019–20 or 2020–21), before adjusting for the carry-back
- the taxable income in the previous year, again before adjusting for the carry-back; or
- an amount determined by the taxpayer.

Example 3

Tranquillity Limited (Tranquillity) is an online media site that publishes daily news articles and lifestyle stories with a focus on holistic lifestyles. It proved to be very popular for the year ended 31 March 2019 and made a taxable profit of $140,000.

However, Tranquillity has suffered a number of setbacks in the 2020 income year, both as a result of COVID-19 and also because of unrelated pressures facing the media industry. For the year ended 31 March 2020 Tranquillity is estimating a tax loss of $180,000.

As the limit of the loss carry-back is the lesser of the loss made in the 2020 year and the profit in the 2019 year, Tranquillity Ltd is only able to carry back $140,000 of the loss. The $40,000 excess loss balance can be carried forward to the 2021 year to offset against future profits of the company.

If the company is within a wholly owned group of companies, the amount that could be carried back is only the amount that cannot be offset against profits within its wholly owned group in the loss year.

Example 4

Apollo Supplies Group (ASG) is a 100% wholly owned group that manufactures and supplies hospitality and kitchen equipment to a range of commercial operators in New Zealand. Some companies within the group focus on manufacturing while Apollo Distribution Limited (Apollo) is responsible for sales within New Zealand.

In the year ended 31 March 2019, Apollo made a taxable profit of $420,000. It grouped its profits with the losses of other members within the ASG which, overall, made a group taxable profit of $2.5 million.

All companies within the ASG faced a downturn in revenue in the 2020 income year because of COVID-19. Apollo has been the most significantly affected company within the group and, in the year ended 31 March 2020, Apollo made a tax loss of $120,000 largely because of making virtually no sales in the last quarter of the 2020 income year. Apollo wishes to carry back its loss to the 2019 income year and offset it against other companies in the ASG.

Before Apollo carry back its loss to the 2019 year it must first make maximum use of the ability to group the loss in the 2020 year itself with its other 100% wholly owned companies in the ASG.

Together, the other members of ASG (excluding Apollo) made a taxable profit for the year ended 31 March 2020 of $90,000. As a result, the tax loss available to carry back to the 2019 year is $30,000. Apollo can group the remaining $90,000 of the 2020 loss with the profit of other group companies or carry it forward.

Apollo can carry back $30,000 of its 2020 tax loss and offset this against its 2019 year profit. If it did not have sufficient profit, it could group the loss against the profits of other companies in ASG in the 2019 income year.

Taxpayers would be able to claim a refund for a loss carry-back by re-estimating provisional tax (where the 2019–20 is the taxable income year) or amending their tax return (where 2018–19 is the taxable income year). The Bill proposes that the deadline for re-estimating provisional tax would be extended from the final instalment date until the date the tax return is filed (or the due date if this is earlier). This would allow taxpayers to have time to consider the estimate of their tax loss for the net loss year.

For example, if a company is in profit for 2019–20 and estimates it would be in loss in 2020–21, it could re-estimate its 2019–20 provisional tax by taking into account the estimated loss carry-back deduction. It could do this any time up to the earlier of:

- the day the 2019–20 tax return is filed; or
- the day the 2019–20 tax return is due.

Provisional tax already paid could then be refunded. The proposed provision also extends to shareholder-employees of a company who may have paid provisional tax on the basis that they would receive a shareholder salary from the company which is not in fact paid because the company's pre-salary income is offset by a loss carry-back.

Example 5

Dorothy and Mary own Hidden Figures Limited (HFL) a company that makes model spacecraft. They have had a pretty good year to 31 March 2020 overall but had a terrible month of March because their main customer base is overseas visitors. Given the current COVID-19 situation and the expected worldwide decline in travel Dorothy and Mary do not see the financial position of the business improving until they get their on-line sales up and running or the tourist market gets back to previous levels.

They sit down and work out that even by cutting costs HFL will probably make a loss to 31 March 2021 of at least $120,000. In the 2019–20 income year HFL used the standard method to pay provisional tax. Its instalments for the year were $24,000 on both the 28th of August 2019 and 15th of January 2020. Dorothy and Mary have calculated that, pre-COVID, they think HFL was likely to make taxable income of $267,000 with tax payable on that of $74,760 and they were planning to make a final instalment of provisional tax on 7 May 2020 of $26,760.

They elect to carry back the anticipated loss from the 2020–21 income year to the 2019–20 income year. This will give them a revised taxable income of $147,000 ($267,000-$120,000) and tax liability of $41,160. At the third instalment they decide to estimate HFL's tax liability at $41,160 via myIR. This means there is no payment required at the third instalment date and Inland Revenue will issue HFL a refund of $6,840 ($48,000 − $41,160).

In October 2020 Dorothy and Mary realise that the business has been doing worse than expected and now anticipate the 2020–21 loss to be $170,000. When they are preparing HFL's 2019–20 income tax return they reflect this increased loss in the return and when they file they receive an additional refund of $14,000.[1]

However, when completing the 2020–21 tax return for HFL Dorothy and Mary calculate that the loss for the 2020–21 income year will only be $110,000 given the quick recovery of the tourist industry in the first quarter of calendar year 2021. They complete the 2020–21 return and then amend the 2019–20 return for HFL. The reduced loss will mean that HFL has taxable income of $157,000 ($267,000 − $110,000) and a tax liability of $43,960 in 2019–20. It has only paid tax of $27,160 so will have tax payable of $16,800 (that is, $5,600 at each instalment date). It will need to pay use-of-money interest on this amount over the three provisional tax instalment dates.

If the tax return for the profit year has already been filed, the taxpayer would be able to request a reassessment and refund because of the loss carry-back.

Example 6

Eagle Beach Kayaking Ltd (Eagle) operates kayaking tours in Abel Tasman National Park and makes the majority of its income for the year in the summer months. The company experienced a significant reduction in bookings and a number of cancellations from early December 2019 as a result of COVID-19 which has resulted in it making a loss for the year ended 31 March 2020 of $70,000. In the prior year the company made a taxable profit of $95,000 and paid tax of $26,600. Eagle filed its 2018–19 tax return in December 2019.

Eagle is eligible for the loss carry-back scheme and is entitled to carry its 2020 loss back to the 2019 year. To do so Eagle will need to amend its tax return for the year ended 31 March 2019 to receive a refund of the overpaid tax in 2019. Eagle amends its 2019 tax return via myIR and receives a refund of $19,600 (($95,000 − $70,000) × 28% less tax paid of $26,600). Alternatively, Eagle could request the Commissioner accept a section 113 of the Tax Administration Act 1994 adjustment in writing, requesting the amendment of its 2019 tax return.

At the time it amended its return Eagle filed an interim imputation credit account (ICA) account which shows a balance in its ICA of $20,500 on the date of the refund and after the refund will have a credit balance of $900. However, if Eagle only had a balance in its ICA of $15,000, The amount of the refund will be restricted to $15,000. This will mean that Eagle will have $4,600 held in its income tax account to use towards other tax debts or future tax payments.

[1] Calculated as ($267,000 − $170,000) × 28% = $27,160 − $41,160 = $14,000.

Almost all types of taxpayers would be eligible to carry back losses (companies, trusts, and individuals). The majority of individuals who are taxed through the PAYE system and are subject to auto-calculation (qualifying individuals) do not have losses so would be unaffected by this measure, but those that operate businesses through partnerships, limited partnerships, and look-through companies would be able to benefit. Taxpayers who have ringfenced rental losses would also not be able to carry back losses.

Example 7

For the year ended 31 March 2019 Michael paid tax of $21,940 on $94,000 of income, all of which related to wages and interest income he earned during the year. Michael was therefore a "qualifying individual" in the 2019 income year.

In the year ended 31 March 2020 Michael entered into a partnership with Gus, running a small accounting advisory firm – Michael And Gus Accounting (MAGA). Michael and Gus's partnership made an $80,000 loss in the 2020 income year as it was still a new business with a small number of clients and it was challenging establishing itself post-COVID-19. Each partner was allocated $40,000 of the partnership's loss to include in their 2020 tax return. After including his other income, Michael has a net loss of $25,000 for 2020.

The loss carry-back scheme does not apply to individuals who are qualifying individuals in the loss year. As Michael was not a qualifying individual in the loss year (the 2020 income year), Michael is eligible to carry his $25,000 loss back to the 2019 income year. This will now make his taxable income $69,000, with tax thereon of $13,720, Michael will receive a refund of $8,220 ($21,940 − $13,720) after amending his return through myIR.

Michael would not be eligible if he only received reportable income such as salary, wages and dividends in the 2020 loss year as it would be impossible for him to have a loss.

Example 8

Katherine owns a number of residential rental properties. In the year ended 31 March 2020 she paid $22,400 of tax on her net rental income of $80,000.

In the year ended 31 March 2021 Katherine reduced the rent she was charging her tenants as, because of COVID-19, the majority could not continue to afford to pay the same rent. Overall, Katherine only received $40,000 of rental income from tenants in the 2021 income year, however, her rental expenses largely remained the same and her total rental deductions for 2021 were $60,000. As a result, her rental properties made a loss of $20,000. Katherine wants to carry her $20,000 loss back to the 2020 income year under the new loss carry-back provision and cash out the loss she has made this year.

Under the ring-fencing of residential property rules, the amount of Katherine's rental deductions allowed is capped at the amount of rental income received (that is, $40,000) and her excess deductions will be carried forward to the 2022 income year. Katherine cannot carry her excess rental deductions back.

Multi-rate PIEs (most unit trusts and KiwiSaver funds) may not carry back losses. Multi-rate PIEs (including KiwiSaver) have tax cash-out for losses so already benefit from immediate tax relief for losses.

Standard features from the tax system would apply and are therefore not specified within the Bill. These include:

- To obtain a refund of income tax, a company must have an imputation credit account credit balance of at least the amount of the refund at the end of the most recently ended tax year, or alternatively it can complete an interim imputation return up to the date of the refund request.

- If the loss carry-back is overestimated, resulting in tax to be paid later, standard use of money interest would apply in the normal way.
- The loss carry-back must ultimately be supported by a net loss shown on a tax return filed for the loss year.
- If the tax return for the loss year is not filed, the loss carry-back deduction could be disallowed.
- If a loss company is a member of a group of companies, its loss can be carried back to the profit year and offset against the income of those other group companies. This requires that all of the companies in the group are 66% or more commonly owned from the beginning of the year of profit to the end of the year of loss, with provision made for part periods.
- As proposed by clause 12, the Bill would amend section RM 10(4) of the Income Tax Act 2007 so if the taxpayer owes a debt on other tax types, Inland Revenue would not apply any of the refund arising from the loss carry-back to satisfy tax debts.
- As proposed by clause 19, the Bill proposes that where use of money interest applies because of an overestimate of the loss carry-back, the taxpayer cannot use the remission of interest provisions in section 183ABAB of the Tax Administration Act 1994.

The Bill also inserts a proposed anti-avoidance provision in clause 5. This would apply where a share in a company has been subject to an arrangement which allows a loss company to meet the requirements of the new section IZ 8 and the purpose of that arrangement is to defeat the intent of section IZ 8. Any arrangement subject to this provision would not be treated as meeting the requirements of section IZ 8.

Clause 6 of the Bill also proposes that section GB 4(1)(b) and GB 4(2) which deal with arrangements for grouping tax losses for companies would also apply to section IZ 8.

Administrative flexibility

COMMISSIONER DISCRETION TO MODIFY DUE DATES, TIMEFRAMES OR PROCEDURAL REQUIREMENTS

(Clauses 15 and 16)

Summary of proposed amendment

Proposed new sections 6H and 6I of the Tax Administration Act introduce a temporary discretionary power the Commissioner may use to provide flexibility for due dates, deadlines, time periods, timeframes or procedural and administrative requirements for taxpayers affected by COVID-19 making compliance with current tax obligations impossible, impractical, or unreasonable.

The proposed discretionary power is intended to provide the Commissioner with a more timely mechanism to assist taxpayers who encounter practical difficulties in complying with certain requirements under the Inland Revenue Acts, or under provisions in the Unclaimed Money Act 1971. The proposed power is therefore intended to supplement existing provisions already available to taxpayers affected by COVID-19.

Where taxpayers comply with a modified timeframe or requirement made under this proposed power, they would be treated as if they complied with the requirement set in legislation.

Application date

The proposed amendment would apply from enactment and may be exercised for obligations which arose from 17 March 2020. The discretion would only apply until 30 September 2021 for dates and variations within that timeframe. The discretion could be further extended by Order in Council.

Key features

The proposal provides the Commissioner with a temporary power to vary due dates, deadlines, time periods, timeframes and administrative or procedural requirements for taxpayers who are adversely affected by COVID-19.

Specifically, it would allow the Commissioner to:

- extend a due date, deadline, time period or timeframe in relation to a requirement; and
- modify a procedural or administrative requirement that must be met under a provision, for example, modifying the nature or form of information that is required to meet the provision.

If a taxpayer complies with an alternative set out in a variation they would be treated as if they complied with the requirements set out in legislation.

Variations must be made within and relate to the approximately 18-month period of 17 March 2020 to 30 September 2021. This limit would recognise that this is a discretionary power conveyed on the Commissioner for the purpose of assisting taxpayers with certain the COVID-19 compliance issues.

Background

The Commissioner of Inland Revenue is charged with the administration of the Inland Revenue Acts. As part of that administration, the Commissioner must use her best endeavours to protect the integrity of the tax system.

There is existing flexibility for the Commissioner to accommodate taxpayers affected by COVID-19. These include the ability for the Commissioner to remit late filing penalties or use of money interest when a taxpayer files or pays late and is affected by COVID-19, to change some dates by Order in Council or the Commissioner's care and management power.

Given the process and time required for an Order in Council, and the concern that existing provisions may be unable to resolve particular difficulties, providing a time-limited discretion to allow the Commissioner to extend due dates and timeframes or to modify other procedural requirements would be a more efficient way to respond quickly and provide relief to those affected by COVID-19.

Therefore, the proposed mechanism would be more flexible and timely, and would be used where the Commissioner considers an appropriate outcome is not possible or is difficult to achieve under a current provision.

The proposed power is intended to cover situations where it may be unreasonable for taxpayers to comply with due dates, timeframes or procedural requirements set out in tax legislation because of the impacts of COVID-19.

A taxpayer would not need to apply a variation, they could continue to comply with tax laws as enacted.

Detailed analysis

The proposed amendments would provide the Commissioner with the ability to, at her discretion:

- extend a due date, deadline, time period, or timeframe by, within or in relation to which:
  - a person must comply with a requirement set out in the provision
  - a person must make an election under the provision; and
  - a person's entitlements, rights or obligations are affected.
- modify procedural or administrative requirements.

Due dates and timeframes could relate to payment, filing, disclosure or other time-based requirements, while procedural or administrative requirements are intended to cover where some information or other requirement may be able to be completed using an alternative method or means, for example, modifying the nature or form of information or action required.

Subsection 6H(1) clarifies that the proposed discretion could be exercised for any provision in the Inland Revenue Acts listed in Schedule 1 of the Tax Administration Act 1994. Subsection 6H(5) would extend the definition of the Inland Revenue Acts for this purpose to include the Unclaimed Money Act 1971.

When the Commissioner would exercise the discretion (supplementary nature)

Section 6H sets out the purpose of the proposed discretion, including how it would be used within the framework of existing provisions which provide relief or flexibility. The Commissioner would exercise the proposed power at her discretion, consistent with her obligations to maintain the integrity of the tax system.

The proposed provision is intended to ensure the Commissioner could exercise sufficient flexibility across tax types and compliance requirements to account for practical compliance concerns arising from COVID-19. However, discretion under the proposed new power is intended to be used where the Commissioner considers an appropriate outcome is either not possible or may be difficult to achieve under the terms of the existing provisions. Existing provisions include recently introduced rules around the remission of use of money interest. This is reflected in 6H(3).

Temporary application over an 18-month period

Subsection 6H(4) proposes that the Commissioner could exercise the discretion under this provision for a period of approximately 18 months, and that this applies for dates, timeframes or requirements that may arise for a taxpayer over this 18 month period. Any variation made must be confined to obligations that occur within this period.

The temporary nature of the proposed discretion recognises that this supplementary discretion power is only available to assist taxpayers with some of the impacts of COVID-19 and related measures.

In addition, subsection 6H(4) proposes that this timeframe could be extended through an Order in Council on recommendation by the Minister of Revenue, if that is required to account for longer lasting effects of COVID-19.

Applies to taxpayers affected by COVID-19

Subsection 6H(2) proposes that the Commissioner could exercise this discretion where compliance with current requirements is impossible, impractical or unreasonable, because of circumstances arising from COVID 19 or response measures to COVID-19, including by the Government.

Applies generally for a class of taxpayers affected by COVID-19

Section 6I (3) proposes that a variation would apply generally unless the Commissioner specifies that it applies to a specific class of taxpayers or if specific circumstances or conditions are required.

This would provide consistency across taxpayers in similar situations where they are affected by COVID-19 and allow Inland Revenue to automatically apply an extension for a group of affected taxpayers, as variations would only be advantageous to taxpayers.

Taxpayers may choose whether or not to comply with variation or existing requirements

The proposed variations are intended to either provide taxpayers with more time or modify a procedural or administrative requirement in a way that provides additional options or less onerous compliance requirements.

However, t*axpayers may always choose to comply in the way set out in the legislation rather than in line with any published variation.*

Proposed subsection 6I(4) would achieve this optionality by providing that taxpayers who are covered by a variation may elect whether or not to use it by either informing the Commissioner or taking a tax position that reflects their choice.

Subsection 6I(2) proposes that where taxpayers comply with a variation made under this power, they would be treated as if they complied with the requirement set in legislation.

A variation does not change an underlying due date or requirement. However, if a variation is available to a taxpayer and they comply with it they would be treated, through subsection 6I(2) as if they complied with the requirement set out in legislation.

If a taxpayer is still unable to comply with a variation or alternative requirements, they should contact Inland Revenue to discuss their circumstances.

The Commissioner would publish details of a varied requirement

Proposed subsection 6I(5) would require the Commissioner to publish any variation that she has made using this proposed discretion. This is intended to provide information in a central place, such as the Inland Revenue website, to communicate the COVID-19 variations to any affected taxpayers.

Publishing this information would provide transparency and help promote consistency for treatment of taxpayers in similar positions.

Amendment to confirm the exercise of this discretion is not a disputable decision

Proposed amendments to the definition of disputable decision in section 3 of the Tax Administration Act 1994 provide that the decision to issue, or to decline to issue, a variation under section 6I would not be a disputable decision.

Ministerial welfare programme

COVID-19 NEW ZEALANDERS STRANDED OVERSEAS SUPPORT MINISTERIAL WELFARE PROGRAMME

(Clauses 4, 10, 13, 17 and 21–25)

Summary of proposed amendment

Amendments are proposed to the Income Tax Act 2007 and Tax Administration Act 1994 to ensure that payments made under the COVID-19 New Zealanders Stranded Overseas Support (NZSOS) Ministerial welfare programme in lieu of another payment normally payable under the Social Security Act 2018, New Zealand Superannuation and Retirement Income Act 2001, or Veteran's Support Act 2014 are subject to the same tax treatment as those payments.

Proposed amendments to the Child Support Act 1991 would also ensure that when such payments are made and the person is a receiving carer for child support the usual child support rules would apply.

Application date

The proposed amendments would apply from 20 April 2020.

Key features

The proposals would amend the definitions of income-tested benefit, New Zealand superannuation and veteran's pension in section YA 1 of the Income Tax Act 2007 to include the equivalent payments made under the COVID-19 NZSOS programme, by introducing new defined terms "main benefit equivalent assistance", "New Zealand superannuation equivalent assistance", "veteran's pension equivalent assistance", and "COVID-19 New Zealanders Stranded Overseas Support Programme".

These proposals would ensure that:

- individuals in receipt of these COVID-19 NZSOS payments are subject to the same income tax rules as if they had received their income-tested benefit, New Zealand superannuation or veteran's pension directly
- the Ministry of Social Development (MSD) is required to deduct and pay the relevant PAYE to Inland Revenue as is currently required with income-tested benefits, New Zealand superannuation and veteran's pension
- an individual's entitlement to Working for Families tax credits is not impacted and MSD can continue to pay the family tax credit and Best Start credit to COVID-19 NZSOS recipients who would otherwise be eligible; and
- student loan repayment obligations remain the same.

Other payments made under the COVID-19 NZSOS programme are made in lieu of payments and benefits that are exempt from tax. These will remain exempt from tax under section CW 33 of the Income Tax Act 2007.

While orphan's benefit and unsupported child's benefit remain exempt from income tax, the proposals would add definitions of these terms to section YA 1 to ensure that their equivalent COVID-19 NZSOS payments are appropriately considered for Working for Families purposes.

The proposed amendments to the Child Support Act 1991 would ensure that:

- child support payments made to receiving carers who receive NZSOS payments equivalent to the sole parent rate of benefit or the unsupported child's benefit, would continue to be retained to offset the cost of that benefit to the Crown; and
- the correct living allowance is applied to those receiving the equivalent of a supported living payment.

Background

On 17 April 2020, the Minister for Social Development made a Ministerial welfare programme under section 101 of the Social Security Act 2018 for beneficiaries and superannuitants stranded overseas as a result of COVID-19 (COVID-19 NZSOS programme).[2] Payments under the COVID-19 NZSOS programme began on 20 April 2020.

The COVID-19 NZSOS programme allows the Ministry of Social Development to make payments to individuals who cannot otherwise receive their standard payment because they are stranded overseas as a consequence of COVID-19. These payments are equivalent to what the individual would otherwise receive had they been able to return to New Zealand and the intention is that there should be no difference for the recipient in terms of the tax treatment and associated obligations.

The COVID-19 NZSOS programme covers the following payments:

- main benefits payable under the Social Security Act 2018;
- orphan's benefit and unsupported child's benefit payable under the Social Security Act 2018
- New Zealand superannuation payable under the New Zealand Superannuation and Retirement Income Act 2001
- veteran's pension payable under the Veteran's Support Act 2014; and
- supplementary assistance.[3]

[2] The Ministerial welfare programme is available at https://www.msd.govt.nz/documents/about-msd-and-our-work/about-msd/legislation/notice-of-change/2020/new-zealanders-stranded-overseas-programme.pdf

[3] Defined in clause 2 of the COVID-19 NZSOS programme as:

(a) Accommodation Supplement;
(b) Child Disability Allowance;
(c) Disability Allowance;
(d) Orphan's Benefit;
(e) Special Benefit;
(f) Special Disability Allowance;
(g) Temporary Additional Support;
(h) Unsupported Child's Benefit;
(i) Winter Energy Payment; and

Temporary Accommodation Assistance, Transitional Assistance Payment and Transitional Subsidy paid under the Ministerial Welfare Programme of those names

Under section CF 1 of the Income Tax Act 2007, income-tested benefits (defined term that covers the same payments as the term main benefit), New Zealand superannuation and veteran's pension are currently subject to income tax. All other monetary benefits payable under the Social Security Act 2018 (excluding income-tested benefits) are exempt from income tax under section CW 33.

Detailed analysis

The intent of the proposals is to ensure that an individual in receipt of a COVID-19 NZSOS payment is subject to the same tax treatment, Working for Families entitlements, and student loan and child support obligations that apply for their normal benefit, pension or supplementary assistance payment.

Changes to definitions

The Bill proposes to add several new defined terms to section YA 1 of the Income Tax Act 2007 and would amend existing definitions to achieve this.

The proposed new defined term "COVID-19 New Zealanders Stranded Overseas Support Programme" in section YA 1 is a reference to the COVID-19 NZSOS programme made under section 101 of the Social Security Act 2018 and forms the basis of the proposed new defined terms:

- main benefit equivalent assistance
- New Zealand superannuation equivalent assistance
- veteran's pension equivalent assistance
- orphan's benefit equivalent assistance; and
- unsupported child's benefit equivalent assistance.

These proposed new definitions refer to the specific clauses in the COVID-19 NZSOS programme under which the relevant equivalent payments are made:

- payments equivalent to veteran's pension and New Zealand superannuation are provided for in clause 10 of the programme
- payments equivalent main benefits/income-tested benefits are in clause 11; and
- payments equivalent to supplementary assistance (including orphan's benefit and unsupported child's benefit) are in clause 12.

As some individuals may have already lost their entitlement to their benefit or pension prior to 20 April 2020, clause 9 of the COVID-19 NZSOS programme enables MSD to make a lump-sum payment to the individual for this period.

The proposed new equivalent assistance definitions therefore refer to both clause 9 and either clause 10, 11 or 12.

The Bill proposes to amend the definition of income-tested benefit to include main benefit equivalent assistance, the definition of New Zealand superannuation to include New Zealand superannuation equivalent assistance, and the definition of veteran's pension.

Orphan's benefit and unsupported child's benefit are currently undefined terms but appear in section MD 6, the definition of dependent child in section YA 1 and in section 80KK of the Tax Administration Act 1994. The Bill proposes to remove these in-text section references and insert new definitions of orphan's benefit and unsupported child's benefit, which would include orphan's benefit equivalent assistance and unsupported child's benefit assistance, respectively.

An amendment to the definition of financially independent in section YA 1 is proposed to ensure all payments made under the COVID-19 NZSOS programme are covered.

Impact of definitional changes and other changes

One result of these proposed definitional changes would be that main benefit equivalent assistance, New Zealand superannuation equivalent assistance, and veteran's pension equivalent assistance are taxed as income under section CF 1(1) and are subject to the PAYE rules under section RD 5(6). This means that when MSD makes a COVID-19 NZSOS payment that is paid instead of an income-tested benefit, New Zealand superannuation or veteran's pension, they are required to account for PAYE on the payment as they normally would with a pension or benefit.

Monetary benefits payable under the Social Security Act 2018 are exempt income under section CW 33(1), including amounts payable under a section 101 Ministerial welfare programme. There is an existing exclusion for income-tested benefits, which would include the proposed new main benefit equivalent assistance. The Bill proposes two additional exclusions to cover New Zealand superannuation equivalent assistance and veteran's pension assistance. This would ensure that these payments would be taxable under section CF 1.

This would mean that for an individual normally in receipt of a benefit or pension, there would be no difference in treatment when they receive a COVID-19 NZSOS payment instead.

For the purposes of the Working for Families rules, the term "social assistance payment" is defined in section MA 8 as meaning income-tested benefits, New Zealand superannuation and veteran's pension. Through the proposed amendments to these three definitions, an individual in receipt of the equivalent payments under the COVID-19 NZSOS programme would be entitled to the same Working for Families tax credits as if they had received their normal benefit or pension instead.

As the definitions used in the Income Tax Act 2007 flow through into the Tax Administration Act 1994, MSD would be able to continue paying the Best Start and family tax credits to eligible individuals.

As the Student Loan Scheme Act 2011 also uses the definitions from the Income Tax Act 2007, the amendments would ensure there is no difference in student loan obligations.

The proposed changes to the Child Support Act 1991 would ensure that when MSD makes a COVID-19 NZSOS payment that is paid to a sole parent beneficiary or recipient of an unsupported child's benefit, the child support rules apply as they would normally.

Specifically, the proposed amendments would ensure that:

- Child support payments made to receiving carers who receive NZSOS payments equivalent to the sole parent rate of benefit or the unsupported child's benefit, would continue to be retained to offset the cost of that benefit to the Crown.
- Recipients of NZSOS payments that are equivalent to a supported living payment would continue to receive the higher rate of living allowance.
- Recipient of NZSOS payments equivalent to a unsupported child's benefit would still be required to apply for child support only for the child(ren) for whom they receive the unsupported child's benefit, unless they receive any other social security benefit.
- Recipients of NZSOS payments equivalent to benefits paid at sole parent rate or unsupported child's benefit would not be able withdraw from child support.
- Child support payments for child(ren) for whom an unsupported child's benefit is paid would continue to be distributed separately to child support payments made for any other children for whom the carer receives a social security benefit.