

Hon Stuart Nash, Minister of Revenue

Information Release

Taxation (Use of Money Interest Rates Setting Process) Amendment Regulation 2020

July 2020

Availability

This information release is available on Inland Revenue's Tax Policy website at <https://taxpolicy.ird.govt.nz/publications/2020-ir-cab-leg-20-sub-0028/overview>

Documents in this information release

1. LEG-20-SUB-0028 – Cabinet paper: Taxation (Use of Money Interest Rates Setting Process) Amendment Regulation 2020 (3 March 2020)
2. LEG-20-MIN-0028 – Minute: Taxation (Use of Money Interest Rates Setting Process) Amendment Regulation 2020 (3 March 2020)

Additional information

The Cabinet paper was considered by the Cabinet Legislation Committee on 3 March 2020 and confirmed by Cabinet on 9 March 2020.

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

- Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020

Information withheld

No information was withheld for this information release.

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In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

USE OF MONEY INTEREST RATES SETTING PROCESS AMENDMENT REGULATION

Proposal

1. This paper seeks the Cabinet Legislation Committee's agreement to submit an Order in Council: Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020 amending the Taxation (Use of Money Interest Rates Setting Process) Regulation 1997 to the Executive Council.
2. It is proposed that the Order in Council applies from 9 April 2020.

Introducing a zero percent floor

3. Use of money interest is a cornerstone of the tax compliance system in New Zealand. Taxpayers must pay it if they have underpaid their tax and the Commissioner pays it where tax has been overpaid. The legislated twin objectives of the use of money interest provisions are to:
 - 3.1 fairly compensate the party (either the Crown or the taxpayer) that does not have the use of its money; and
 - 3.2 encourage taxpayers to pay the right amount of tax at the right time.
4. The Taxation (Use of Money Interest Rates Setting Process) Regulation 1997 outlines the method used for setting the overpayment rate (the Commissioner's paying rate). This method uses the Reserve Bank of New Zealand 90-day bank bill rate minus 100 basis points (1%).
5. There is currently no floor on the calculation of the rate. This means the 90-day bank bill rate dropping below 1% will cause the Commissioner's paying rate to be negative. This is a real possibility and this proposal will add a zero percent floor to the method ensuring it is not set at a negative rate.
6. The Commissioner charging negative interest on overpaid tax would likely be perceived as being inconsistent with the principles of use of money interest – to fairly compensate taxpayers. This would be especially true if the 90-day bill rate were still positive, but the Commissioner's paying rate was negative.
7. The proposal would be implemented through an Order in Council under the existing legislative framework in section 120H of the Tax Administration Act 1994. This section outlines that the Governor-General may, by Order in Council, specify the criteria and other requirements by and against which interest rates will be set.

8. I recommend that the Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020 is made to amend the Taxation (Use of Money Interest Rates Setting Process) Regulation 1997 to prevent the Commissioner's paying rate becoming negative.

Financial implications

9. There is a potential opportunity cost to the Crown from the introduction of a floor as any revenue that might otherwise potentially be received from a negative UOMI rate will not be received.
10. Assuming the Government would use negative interest rates ahead of the market doing so, the size of this opportunity cost is estimated to be approximately \$7 million per year, or \$28 million less revenue over the forecast period if such an event is triggered in the near future. This estimate is based on a presumption the lowest the 90-day bill rate will drop to 0.7% by April 2020.¹ Therefore, the cost of this policy change is calculated using the difference between switching the UOMI rate from 0.81% to 0.00% (the floor) and changing the UOMI from 0.81% to -0.3% (the lowest it is currently forecast to reach).

Timing and 28-day rule

11. I propose that changes to the Commissioner's use of money interest paying rate be made from 9 April 2020. The Order would therefore be in accordance with the rule that regulations must not come into force until at least 28 days after they have been notified in the New Zealand Gazette.

Compliance

12. The Order complies with:
 - 12.1 the principles of the Treaty of Waitangi;
 - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 12.3 the principles and guidelines set out in the Privacy Act 1993;
 - 12.4 relevant international standards and obligations; and
 - 12.5 the Legislation Guidelines, which are maintained by the Legislation Design and Advisory Committee.
13. No statutory prerequisite exists for making this Order.

Regulations Review Committee

14. There are no anticipated grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House under Standing Order 319.

¹ Preliminary forecast from the Half Year Economic and Fiscal Update 2019.

Certification by Parliamentary Counsel

15. The Parliamentary Counsel Office has certified that the Order in Council is in order for submission to Cabinet.

Impact Analysis

16. The Treasury agrees that no Regulatory Impact Assessment is required for this proposal, since it is expected to have only minor impacts on businesses, individuals or not-for-profit entities.

Publicity

17. I intend to issue a media statement once the Order in Council is made by the Executive Council.
18. The new Order in Council will be published in the New Zealand Gazette and on Inland Revenue's website. Inland Revenue will also publish an article about these changes in its Tax Information Bulletin.

Proactive Release

19. I propose to release this Cabinet paper, and associated Order in Council, in full shortly following the publication of the signed Order in Council in the New Zealand Gazette.

Consultation

20. The Treasury, Parliamentary Counsel Office, and the Reserve Bank have been consulted in the preparation of this paper.

Recommendations

The Minister of Revenue recommends that the Cabinet Legislation Committee:

1. **agree** to setting a zero percent floor the Commissioner's use of money interest paying rate;
2. **note** that the Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020 will give effect to the decision referred to in paragraph 1 above;
3. **authorise** the submission to the Executive Council of the Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020.

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.

Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020

Portfolio **Revenue**

On 3 March 2020, the Cabinet Legislation Committee:

- 1 **noted** that:
 - 1.1 the Taxation (Use of Money Interest Rates Setting Process) Regulations 1997 provide for the method used for setting the overpayment rate (the Commissioner of Inland Revenue's paying rate);
 - 1.2 the method uses the Reserve Bank of New Zealand 90-day bank bill rate minus 100 basis points (1 per cent);
 - 1.3 if the 90-day bank bill rate drops below 1 per cent, the Commissioner's paying rate will be negative;
- 2 **agreed** to set a zero per cent floor for the Commissioner's use of money interest paying rate;
- 3 **noted** that the Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020 give effect to the decision referred to in paragraph 2;
- 4 **authorised** the submission to the Executive Council of the Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020 [PCO 22551/2.0];
- 5 **noted** that the Amendment Regulations come into force on 9 April 2020.

Gerrard Carter
Committee Secretary

Hard-copy distribution (see over)

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Stuart Nash
Hon Tracey Martin
Hon Julie Anne Genter
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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Minister of Revenue