



## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report:**     **Extending the Commissioner's COVID-19 administrative flexibility**

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<b>Date:</b>	7 July 2021	<b>Priority:</b>	Medium
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2021/303

### Action sought

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	<b>Action sought</b>	<b>Deadline</b>
Minister of Finance	<b>Agree</b> to the recommendations <b>Note</b> the contents of this report	19 July 2021
Minister of Revenue	<b>Agree</b> to recommendations <b>Note</b> the contents of this report	19 July 2021

### Contact for telephone discussion (if required)

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>
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Natisha Jones	Policy Advisor	

7 July 2021

Minister of Finance  
Minister of Revenue

## **Extending the Commissioner's COVID-19 administrative flexibility**

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1. This report seeks your agreement to extend the Commissioner of Inland Revenue's ("Commissioner") discretionary power to provide administrative flexibility for taxpayers affected by COVID-19. This power was introduced on 30 April 2020 as part of a range of response measures to COVID-19.
2. The *COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020* inserted the discretionary power into the *Tax Administration Act 1994*. The discretion allows the Commissioner to vary time related requirements (timelines, due dates, deadlines, and time periods), procedural or administrative requirements when taxpayers are likely to be impacted by COVID-19 and compliance with current requirements is impossible, unreasonable, or impractical.
3. The administrative flexibility measure was limited in application to an 18-month period ending 30 September 2021, unless extended by an Order in Council upon recommendation of the Minister of Revenue. Officials recommend the discretionary power be extended for one year, to enable the Commissioner to respond quickly in the event taxpayers are further impacted by COVID-19.

### **Background**

4. The discretionary power provides more flexibility for taxpayers to comply with their tax obligations where they have been affected by COVID-19. The legislation enables the Commissioner to issue a COVID-19 variation to provide flexibility in the compliance obligations under the Inland Revenue Acts. Where taxpayers comply with a variation, they are treated as if they complied with the requirement set out in legislation.
5. When a taxpayer applies for a COVID-19 variation, the Commissioner must first consider whether the issue can be resolved using existing legislation, including the Commissioner's care and management discretion. If the issue cannot be resolved, the Commissioner may only issue a variation if compliance is impossible, impractical, or unreasonable in circumstances arising from the imposition of COVID-19 response measures or as a consequence of COVID-19.
6. Any COVID-19 variation issued by the Commissioner is optional for taxpayers to apply, taxpayers may choose to comply with the requirements set out in legislation rather than any variation issued. This is to ensure that taxpayers are not worse-off from the variation.
7. Since the power has been in force, the Commissioner has issued 12 variations in 2020 and two variations in 2021, with 17 requests being declined.<sup>1</sup> Generally, variations are targeted and time limited.

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<sup>1</sup> Three of the 17 applications noted were resolved using the Commissioner's care and management provision.

8. For example, a variation was given extending the due date for filing statements of R&D loss tax credits and R&D repayment tax from 1 April 2020 until 31 August 2020. The variation was limited to taxpayers for whom the impact of COVID-19 response measures or the consequences of COVID-19 had a material impact on them not filing the statements on time.
9. Although Inland Revenue does not expect the power to be exercised while in the current circumstances, retaining the discretionary measure will be of use in the event of future outbreaks and/or lockdowns impacting taxpayer's ability to meet their compliance obligations.

### **Administrative implications**

10. There are no significant administrative implications, as the process for assessing and implementing variations under the COVID-19 administrative flexibility measure is already in place.

### **Fiscal implications**

11. Fiscal costs for the COVID-19 variation power are unquantifiable in advance because it depends how the power is exercised. However, the fiscal impact of the variations issued so far have been minor or immaterial as most variations related to the timing allowed for elections or applications to occur.
12. Each fiscal impact depends on the period affected by the variation. For example, two very similar GST variations had varying fiscal impacts depending on whether the variations effectively crossed fiscal years.
13. One variation allowed GST-registered persons to elect to change from six-monthly filing periods to one-monthly, enabling any refunds to be claimed earlier. In this instance the fiscal cost was approximately \$4 million in 2019/20, as GST refunds were claimed in 2019/20 fiscal year instead of the 2020/21 year. In comparison, a similar GST variation had no June year fiscal impact for the government because it covered return periods which did not cross between June fiscal years. However, it was still beneficial from a taxpayers' perspective because it allowed for refund claims earlier than would otherwise have occurred.

### **Consultation**

14. Treasury has been consulted on this report.

### **Next steps**

15. If you agree to the extension, officials will issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to extend the power by one year.
16. Once a draft Order in Council is prepared, we will report to you with a draft Cabinet paper for submission with the Cabinet Legislation Committee.
17. For the Order in Council to come into effect by 30 September, the Cabinet paper would need to be considered by the Cabinet Legislation Committee in the second half of August, or a waiver to the 28-day rule obtained.

**Recommended action**

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We recommend that you:

- a. **agree** to extend the COVID-19 administrative flexibility measure for one year (to 30 September 2022).

Agreed/Not agreed

Agreed/Not agreed

- b. **note** that the fiscal impact of the decision is unable to be quantified but is likely to be minor.

Noted

Noted

- c. **authorise** the Parliamentary Council Office to draft an Order in Council to extend the Commissioner's discretionary power.

Authorise/Not authorised

**Bary Hollow**

Policy Lead – Tax Administration (acting)  
Policy and Regulatory Stewardship

**Hon David Parker**

Minister of Revenue

/ /2021

**Hon Grant Robertson**

Minister of Finance

/ /2021