

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

## **EXTENSION OF END DATE FOR TAX RELIEF FOR DONATIONS OF TRADING STOCK MADE BY BUSINESSES IN RESPONSE TO COVID-19**

### **Proposal**

1. This paper seeks the Cabinet Economic Development Committee's agreement to an Order in Council extending the end date of a tax relief measure for donations of trading stock. The extension is part of the Government's wider COVID-19 relief strategy.

### **Policy**

2. The proposed Order extends a tax relief measure for trading stock donated by businesses in response to the COVID-19 outbreak, with the new end date being 31 March 2023.
3. As a relief measure, the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021 provided time limited relief so that the Income Tax Act did not disincentivise businesses from donating trading stock to mitigate the economic and social impacts of COVID-19.
4. A donation of trading stock is deemed to be a disposal. A deemed income rule in the Income Tax Act effectively reverses the deduction that was claimed when the trading stock was purchased and imposes tax on a deemed profit.
5. Cabinet agreed to turn this rule off, as a temporary COVID-19 relief measure, for a two-year period starting 17 March 2020 (CAB-21-MIN-0013 refers). As a result,
  - 5.1 when a business donates trading stock to a donee organisation or public authority, taxable income does not arise; and
  - 5.2 when a business donates trading stock to a non-associated person (which are not public authorities or donee organisations) taxable income is deemed not to arise if the donation is made for a business purpose.
6. The current end date for this temporary relief measure is 17 March 2022.
7. The economic and social impacts of COVID-19 continue to be felt throughout New Zealand, for example, through increased demands on community foodbanks. Officials therefore consulted a group of stakeholders in November 2021 on the possibility of extending the relief measures. All responses were in favour of a one-year extension to provide certainty for businesses and donee organisations.

Stakeholders were confident that the impacts of COVID-19 would continue beyond March 2022.

### Proposed Order in Council

8. The proposed Order, to be made under s 225ABA of the Tax Administration Act 1994, will extend the period of relief for certain disposals of trading stock. It will come into force on 16 March 2022 and extend the relief period so it ends on 31 March 2023.
9. I recommend this Order be made on the basis that the legal requirements of s 225ABA(4) of the Tax Administration Act have been met. In particular, I am satisfied that people in New Zealand are likely to continue, beyond the expiry of the existing period, to be significantly adversely affected by COVID-19. The comments from stakeholders echoed that the economic and social impacts of COVID-19 continue to be felt throughout New Zealand, for example, through increased demands on community foodbanks.

### Timing and 28-Day Rule

10. The proposed Order will come into force on 16 March 2022.
11. A waiver of the 28-day rule is sought to allow the Order to come into force by 16 March 2023 on the grounds that the Order needs to be in force before the current temporary relief measure period expires. This is necessary to ensure that businesses donating trading stock to donee organisations and public authorities in response to COVID-19 are not disincentivised from donating trading stock. The change is taxpayer favourable.

### Financial Implications

12. The estimated financial implications of extending the temporary relief period from the deemed income rule is shown in the table below. Over the forecast period 2021-22 to 2025-26 the estimated fiscal cost is \$5 million. This cost will be charged against the Tax Policy Scorecard.

	\$m – increase/(decrease)				
<b>Vote Revenue Minister of Revenue</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26 &amp; outyears</b>
Tax Revenue	-	(2.000)	(3.000)	-	-
<b>Total Operating</b>	-	<b>2.000</b>	<b>3.000</b>	-	-

### Compliance

13. The order complies with:
  - 13.1 the principles of the Treaty of Waitangi;

- 13.2 the rights and freedoms contained in the [New Zealand Bill of Rights Act 1990](#) and the [Human Rights Act 1993](#);
- 13.3 the principles and guidelines set out in the [Privacy Act 1993](#) (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
- 13.4 relevant international standards and obligations;
- 13.5 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Regulations Review Committee**

14. Officials consider there are no grounds for the Regulations Review Committee to draw the Order to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

15. The regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

### **Impact Analysis**

16. Treasury's Regulatory Impact Analysis team has determined that the extension of the end date for tax relief for donations of trading stock made by businesses in response to Covid-19 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has been addressed by existing impact analysis [CAB-21-MIN-0013 and [RIA Pack for Supplementary Order Paper No 23 to the Taxation \(Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters\) Bill \(March 2021\) \(ird.govt.nz\)](#)].

### **Communications**

17. I will issue a media statement once the Order in Council is made by the Executive Council.
18. Inland Revenue will publish an article about these changes in its *Tax Information Bulletin*.

### **Proactive Release**

19. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions within 30 working days of Cabinet making final decisions.

### **Consultation**

20. In November 2021 officials consulted a group of interested stakeholders which included the Corporate Taxpayers' Group, Chartered Accountants Australia New Zealand, Federated Farmers, Fonterra, EY, PwC, The New Zealand Law Society,

and Auckland City Mission. This is the same group of stakeholders consulted on the introduction of the relief measures as a part of the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021. All responses we received were in favour of a one-year extension to provide certainty for businesses and donee organisations. Stakeholders were confident that the impacts of COVID-19 will continue to be felt beyond March 2022.

21. The Treasury was consulted on extending the temporary relief and its fiscal implications.

## Recommendations

The Minister of Revenue recommends that the Committee:

1. **note** that the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021 introduced temporary relief from a deemed income rule that is due to expire 17 March 2022.
2. **note** that the Tax Administration Act 1994 allows the temporary relief from the deemed income rule to be extended by Order in Council.
3. **authorise** the submission to the Executive Council of the Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022.
4. **note** that section 225ABA of the Tax Administration Act 1994 requires that the Minister of Revenue be satisfied that people in New Zealand are likely to continue, beyond the expiry of the existing period, to be significantly adversely affected by COVID-19.
5. **note** the advice of the Minister of Revenue that this requirement has been met.
6. **agree** that the proposed Order should come into force on 16 March 2022 and extend the period of relief until 31 March 2023.
7. **note** that agreeing to recommendations 3 and 6 has the following estimated fiscal costs, which will be charged against the Tax Policy Scorecard.

Vote Revenue Minister of Revenue	\$m – increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 & outyears
Tax Revenue	-	(2.000)	(3.000)	-	-
<b>Total Operating</b>	-	<b>2.000</b>	<b>3.000</b>	-	-

8. **note** that a waiver of the 28-day rule is sought on the basis that the exercise of the power will only positively affect taxpayers and so that the Order can come into force on 16 March 2022 before the current temporary relief expires.
9. **agree** to waive the 28-day rule so that the regulations can come into force on 16 March 2022.

Authorised for lodgement

Hon David Parker  
Minister of Revenue