

Hon David Parker, Minister of Revenue

Information Release

Tax Administration (July Adverse Weather Event) Order 2022

September 2022

Availability

This information release is available on Inland Revenue's tax policy website at <https://taxpolicy.ird.govt.nz/publications/2022/2022-ir-cab-leg-22-sub-0134>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2022/377	Policy report	Tax Administration (July Adverse Weather Event) 2022	1 August 2022
2	LEG-22-SUB-0134	Cabinet Paper	Tax Administration (July Adverse Weather Event) Order 2022	4 August 2022
3	LEG-22-MIN-0134	Minute	Tax Administration (July Adverse Weather Event) Order 2022	11 August 2022

Additional information

The Cabinet paper was considered by the Cabinet Legislative Committee on 11 August 2022 and confirmed by Cabinet on 15 August 2022.

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

- Tax Administration (July Adverse Weather Event) Order 2022¹

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
- 9(2)(ba)(i) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied

¹ <https://www.legislation.govt.nz/regulation/public/2022/0232/latest/whole.html>

Accessibility

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POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Order in Council: Tax Administration (July Adverse Weather Event) Order 2022

Date:	1 August 2022	Priority:	High
Security level:	In Confidence	Report number:	IR2022/377

Action sought

	Action sought	Deadline
Minister of Revenue	Approve and lodge the attached paper to Cabinet office	10am, Thursday, 4 August 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
Peter Frawley	Policy Lead	s 9(2)(a) [Redacted]
Brandon Sloan	Principal Policy Advisor	s 9(2)(a) [Redacted]

1 August 2022

Minister of Revenue

Order in Council: Tax Administration (July Adverse Weather Event) Order 2022

1. The report recommends you agree to an Order in Council that permits Inland Revenue to remit use of money interest (UOMI) charged on the late payment of tax. The proposed Order is a tax relief measure in response to the flooding and weather-related events experienced in several areas of New Zealand as a result of the severe storm fronts in the latter half of July 11 to 31 July 2022. The Order would declare the recent weather fronts as an emergency event for the purposes of the Inland Revenue Acts.¹
2. If you agree to the recommendations in this report, we also recommend you approve and lodge the attached paper to Cabinet approving the Order in Council.
3. We recommend that the proposal be submitted directly to Cabinet to ensure the relief is timely for those affected taxpayers.
4. The Order would give Inland Revenue flexibility to allow affected taxpayers to pay their tax obligations on a later day, other than that required by the Inland Revenue Acts, without incurring UOMI.

Request from Federated Farmers New Zealand for tax payment date flexibility

5. Inland Revenue has been approached by Federated Farmers of New Zealand (on 27 July 2022) requesting some flexibility for due tax payment dates for rural and isolated communities. Federated Farmers note that the unusual sequencing of weather fronts for a prolonged period is creating stress particularly for primary industry communities in Northland, Gisborne district, Wairoa district, Canterbury, and Otago. These communities have, over the last fortnight been affected by flooding, high winds, and infrastructure disruptions, such as power and road outages. For example, Canterbury is said to have recorded more rain in July since records began.
6. The combination of the last fortnight's weather fronts has resulted in flooding and disruption which has significantly adversely affected some taxpayers' ability to meet their tax obligations. For example, PAYE payments, and FBT quarterly returns were due on 20 July. GST returns for taxpayers with taxable periods ending June were due on 28 July. Finally, some taxpayers would have had provisional tax payments due on 28 July.
7. Without relief, the late payment of these tax types results in the automatic statutory imposition of UOMI.
8. The current rate of interest on underpayments of tax is 7.28 percent.

¹ An emergency event for the purpose of the Inland Revenue Acts is different from an emergency event declared under the Civil Defence Emergency Management Framework. The Order discussed in this report deals with provision of tax relief for taxpayers affected by the series of severe weather fronts that affected New Zealand between 11 July and 31 July 2022.

The case for providing UOMI relief

9. The Tax Administration Act 1994² provides for the making of an Order in Council to allow Inland Revenue to remit UOMI when:
 - 9.1 an emergency event has or will significantly adversely affect a taxpayer's ability to pay an amount of tax on time, or make an accurate forecast of provisional tax;
 - 9.2 this non-payment results in the imposition of UOMI; and
 - 9.3 the taxpayer is a member of a class of persons eligible for remission of UOMI if the Order in Council declaring the emergency event describes such a class of persons.
10. The practical effect of UOMI remission is that it allows affected taxpayers covered by the scope of the Order to focus on recovering from the event rather than on their tax affairs. Last year the statutory test for when an emergency event could be declared changed from considering whether taxpayers were "physically prevented" from paying tax, to whether the taxpayers have been "significantly adversely affected". This change aligns the test for UOMI relief with the tests that were used in response to COVID-19, and allows for consideration of a wider range of factors that otherwise prevent taxpayers from paying tax by the statutory due dates.
11. We have discussed the request from Federated Farmers with the Ministry for Primary Industries (MPI).
12. MPI support the tax relief measure recommended in this report, and note the following:
 - 12.1 While there has been a series of severe weather fronts that have crossed New Zealand in July, they have not met the threshold for a response under the Primary Sector Recovery Policy administered by the Ministry of Primary Industries.
 - 12.2 MPI are continuing to assess the impact of these weather events on rural communities across New Zealand.
 - 12.3 Southern regions, such as South Canterbury and North Otago are currently under coverage of an adverse event declaration until October 2022 in response to the drought conditions that until recently existed. (We consider that this declaration made in March 2022 cannot be used to support the case for interest remission under the Tax Administration Act as it was for a drought, an event that did not prevent taxpayers from meeting their tax obligations.)
13. In support for providing interest remission relief, Federated Farmers have voiced the following concerns for those communities affected by the weather from the last fortnight:

s 9(2)(ba)(i)

[REDACTED]

² Section 183ABA refers.

Suggested response

14. It is unusual for Inland Revenue to recommend a tax relief Order ahead of, or in the absence of, a formal declaration of an adverse event either under MPI's Primary Sector Relief Policy, or a civil defence emergency – such as an earthquake.³ However, we consider from a tax perspective that the totality of the various severe weather fronts since 11 July to 31 July and the wide impacts those fronts have had on all of New Zealand warrants a tax relief response. Our recommendation is based on:
 - 14.1 MPI's support for Inland Revenue's response,
 - 14.2 The recent rainfall from 11 July to 31 July in affected areas has either broken regional records, or has been well-above regional averages, and
 - 14.3 Given the number of regions affected, there are administrative efficiencies if an Order is made.
15. The response would focus on UOMI relief in relation to the payment dates for PAYE/FBT, due 20 July, and GST, due 28 July. The relief would also apply to missed provisional tax payments due 28 July. The recommended Order would also engage Inland Revenue's discretionary relief for remitting penalties for late filing and payment.
16. The proposed Order would describe the emergency event as being the series of weather fronts that crossed New Zealand between 11 July and 31 July 2022. Relief would, however, be restricted to taxpayers who have been significantly adversely affected in the Northland, Gisborne district, Wairoa district, Canterbury, and Otago regions.
17. The proposed Order gives affected taxpayers certainty (assuming timeliness) and allows Inland Revenue to respond to a "class of persons". This ensures an efficient response for those communities. To ensure the relief is timely, we recommend that the attached paper be referred direct to Cabinet for its meeting on 8 August 2022. A later date for making the Order would reduce the overall benefit of the proposed relief measure.
18. Under the proposed Order, affected taxpayers would have up to two months to seek remission of UOMI on any underpayments of tax.
19. If you do not agree with our suggested approach, taxpayers would still be able to seek remission of late payment and late filing penalties (but not interest remission). Decisions would be made on a case-by-case basis and taxpayers would need to prove hardship.

Comment

20. We consider an Order would allow Inland Revenue to best use its resources in determining where tax relief should be directed at and applying Inland Revenue's existing relief discretions. While the main beneficiaries of the Order are expected to be those in rural and isolated communities, it is likely that other taxpayers in those regions will also benefit. For example, in cases where there has been urban and suburban flooding in Christchurch, Timaru, and Dunedin that has significantly adversely affected tax compliance.
21. As noted earlier, in the absence of the Order, some discretions can be exercised, but Inland Revenue would need to consider such requests on a case-by-case basis.

³ For example, an UOMI remission relief Order was made in response to the Hawke's Bay gastroenteritis outbreak in 2016, which was neither an adverse event, or a civil defence emergency.

Administrative implications

22. Notwithstanding that PAYE/FBT payments were due on 20 July, and GST and provisional payments were due 28 July, Inland Revenue has not detected a perceptible uplift in queries from taxpayers seeking relief as a result of being affected by the recent weather events. This is not surprising as we have been informed by Chartered Accountants Australia and New Zealand in respect of the respective emergency responses last year (2021) for the floods in Canterbury, and later for the top of the South Island, that taxpayers in these stressful circumstances often do not consider their tax obligations until after other priority tasks have been attended to.
23. The proposed Order in Council does not have any implications for Inland Revenue's technology systems.

Revenue implications

24. The baseline forecasts do not include the emergency event, nor the potential UOMI charges should the event trigger additional debt. Remission of UOMI for significantly adversely affected taxpayers in the Northland, Gisborne district, Wairoa district, Canterbury, and Otago regions will not affect existing fiscal baselines.

Consultation

25. The Treasury and the Ministry for Primary Industries have been consulted as part of the preparation of this report and concur with its recommendation. MPI support the proposed tax relief measure recommended in this report.
26. We have also consulted with Federated Farmers New Zealand. If you agree to the recommendations in this report, we will inform Federated Farmers and Chartered Accountants Australia and New Zealand about the proposed Order in Council, following Cabinet's consideration on 8 August 2022.

Next steps

27. If you agree to the recommendations in this report, we recommend you approve and lodge the attached paper for Cabinet for its meeting on 8 August 2022. For that paper to be considered at that meeting, it will need to be lodged with Cabinet office by 10am, Thursday, 4 August 2022. It is desirable to authorise the relief as soon as possible. The reasons for this are taxpayer certainty and equity, and the efficient use of Inland Revenue resources.
28. A copy of this report and attached Cabinet paper should be referred to the Minister of Finance and the Minister for Rural Communities for their information.

Recommended action

We recommend that you:

- (a) **Agree** to an Order in Council declaring the recent weather systems that crossed New Zealand from 11 July to 31 July 2022 to be an emergency event for UOMI relief purposes.

Agree/Not agreed

In Confidence

- (b) **Agree** that the class of taxpayer who would be eligible to receive relief under the Order in recommendation (a) would be taxpayers in the Northland, Gisborne district, Wairoa district, Canterbury, and Otago regions that were significantly adversely affected from making a payment of tax by the statutory due date.

Agree/Not agreed

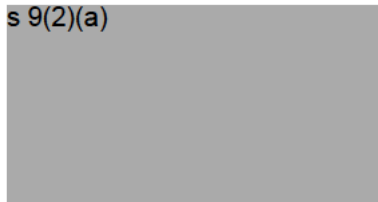
- (c) If you agree to recommendations (a) and (b), **approve** and **lodge** the attached paper to Cabinet on or before 10am, Thursday, 4 August 2022.

Approved and lodged/Not approved

- (d) **Refer** a copy of this report and the attached Cabinet paper to the Minister of Finance and the Minister for Rural Communities.

Referred/Not referred

s 9(2)(a)



Brandon Sloan

Principal Policy Advisor

Policy and Regulatory Stewardship

Hon David Parker

Minister of Revenue

/ /2022

In confidence

Office of the Minister of Revenue

Chair, Cabinet

Tax Administration (July Adverse Weather Event) Order 2022

Proposal

- 1 I seek Cabinet's agreement to allow Inland Revenue to remit interest charges on late payments for taxpayers who have been significantly adversely affected by a series of severe weather fronts that crossed New Zealand between 11 July and 31 July 2022. Allowing Inland Revenue to remit this interest requires an Order in Council.

Policy

- 2 New Zealand has experienced an unusual sequence of severe weather fronts, with regions experiencing record-breaking, or well-above average, levels of rainfall between 11 July and 31 July. The cumulative effect of these fronts has resulted in flooding and disruption in a number of regions which has significantly adversely affected the ability of some taxpayers to meet their tax obligations, including filing, and paying tax on time.
- 3 Inland Revenue has the power to provide relief from late payment and late filing penalties for taxpayers affected by flooding, at the Commissioner's discretion. However, this relief does not extend to the remission of interest (use-of-money interest) charged by Inland Revenue to compensate the Crown for the loss of the use of revenue. This is because the remission of interest requires a higher threshold, such as a natural disaster, and requires Cabinet approval before the relief can be provided. The current rate of interest on underpayments of tax is 7.28 percent. Without relief, the late payment of tax due on the statutory date results in the automatic statutory imposition of interest.
- 4 The Tax Administration Act 1994 provides for an Order in Council to allow Inland Revenue to remit interest where:
 - 4.1 an emergency event significantly adversely affects a taxpayer from paying an amount of tax on time, or make an accurate forecast of provisional tax;
 - 4.2 the non-payment of tax results in the imposition of interest; and
 - 4.3 the taxpayer is a member of class of persons eligible for remission of interest if the Order in Council declaring the emergency event describes such a class of person.
- 5 While it is unusual for Inland Revenue to recommend a tax relief Order ahead of, or in the absence of, a formal declaration of an adverse event, my officials have advised that cumulative effects of the recent unsettled weather systems have been disruptive to a number of communities in Northland, Gisborne District, Wairoa District, Canterbury, Otago regions. These weather-related disruptions have affected some taxpayers from making their tax payments for PAYE and FBT, which was due on

20 July, and GST, which was due on 28 July. Some provisional taxpayers also had instalment payments due on 28 July.

- 6 My officials consider that for taxpayers in these affected communities, the conditions for interest remission relief contemplated by the Tax Administration Act have been met. An Order in Council permitting the remission of interest on underpaid tax would also engage Inland Revenue's discretionary relief for remitting penalties for late filing and payment.
- 7 The practical effect of interest remission is that it allows affected taxpayers covered by the scope of the Order to focus on recovering from the event rather than on their immediate tax affairs.
- 8 I consider an Order also allows Inland Revenue to best use its resources in terms of specifying where tax relief should be directed at, and applying Inland Revenue's existing relief discretions.
- 9 The Order authorises Inland Revenue to remit use-of-money interest incurred by taxpayers whose ability to pay their tax on time was significantly adversely affected by the recent severe weather fronts. The event is defined as the severe weather fronts that crossed New Zealand from 11 July to 31 July 2022. Relief under the Order is directed at communities in Northland, Gisborne district, Wairoa district, Canterbury, and Otago. The Order will commence on its notification in the *Gazette* and will expire on 30 September 2022.

Timing and 28-day rule

- 10 A waiver of the 28-day rule is sought, to enable the regulations to take effect from the day after their notification in the *Gazette*. Exercise of this power is taxpayer-friendly, and is not expected to affect anyone negatively. Further, the sooner the relief is effective the more certain taxpayers' positions will be, and Inland Revenue's processing of relief applications will be more efficient. Once in force, the Order will enable Inland Revenue to remit interest charged prior to the making of the Order.

Compliance

- 11 Section 183ABA of the Tax Administration Act 1994 provides the statutory authority for the Governor-General to declare an event to be an emergency event and qualify for the making of an Order in Council. This event meets the Tax Administration Act's qualifying criteria.

- 12 The Order in Council complies with the following:

The principles of the Treaty of Waitangi	Not applicable
The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993	Not applicable
The principles and guidelines set out in the Privacy Act 1993	Not applicable
Relevant international standards and obligations	Not applicable
The Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee	Compliant

Regulations Review Committee

- 13 Officials believe there are no grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House under Standing Order 327 (2020).

Certification by Parliamentary Counsel

- 14 The regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet, except that they will come into force earlier than the 28th day after the date of their notification in the *Gazette*.

Impact Analysis

Regulatory Impact Assessment

- 15 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it is intended to manage the direct actions taken to protect the public in response to a declared emergency event and intended to temporarily defer or extend legislative deadlines where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome.

Climate Implications of Policy Assessment

- 16 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Publicity

- 17 I will announce Inland Revenue's ability to remit use-of-money interest once the Order is in effect and notified in the *Gazette*.

Proactive Release

- 18 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

- 19 Inland Revenue officials have consulted with the Treasury and the Ministry for Primary Industries. They agree with the proposal in this paper. Federated Farmers were also consulted and agree with the proposed Order.

Recommendations

The Minister of Revenue recommends that Cabinet:

- 1 Note that the Tax Administration Act 1994 authorises the Commissioner of Inland Revenue to remit interest charged to taxpayers for late payment of tax, where the late payment was due to the effects of an emergency event declared by Order in Council.

- 2 Note that the event described as the July Adverse Weather Event meets the criteria specified in the Tax Administration Act 1994 for the declaration of an emergency event.
- 3 Authorise the submission to the Executive Council of the Tax Administration (July Adverse Weather Event) Order 2022.
- 4 Note that this remission of interest is not expected to have an effect on fiscal baselines.
- 5 Note that a waiver of the 28-day rule is sought on the grounds that the exercise of the power will only positively affect taxpayers, and the power it confers will apply to events before the making of the Order.
- 6 Agree to the waiver of the 28-day rule so that the regulations can come into force after their notification in the Gazette.

Authorised for lodgement

Hon David Parker

Minister of Revenue



Cabinet Legislation Committee

3.

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.

Tax Administration (July Adverse Weather Event) Order 2022

Portfolio **Revenue**

On 11 August 2022, the Cabinet Legislation Committee:

- 1 **noted** that the Tax Administration Act 1994 authorises the Commissioner of Inland Revenue to remit interest charged to taxpayers for late payment of tax, where the late payment was due to the effects of an emergency event declared by Order in Council;
- 2 **noted** that the event described as the July Adverse Weather Event meets the criteria specified in the Tax Administration Act 1994 for the declaration of an emergency event;
- 3 **noted** that this remission of interest is not expected to have an effect on fiscal baselines;
- 4 **noted** that a waiver of the 28-day rule is sought for the Tax Administration (July Adverse Weather Event) Order 2022 (the Order) on the grounds that:
 - 4.1 the exercise of the power will only positively affect taxpayers, and the power it confers will apply to events before the making of the Order;
 - 4.2 so that the Order can come into force after their notification in the Gazette;
- 5 **agreed** to the waiver of the 28-day rule so that the Order can come into force after its notification in the Gazette;
- 6 **authorised** the submission to the Executive Council of the Tax Administration (July Adverse Weather Event) Order 2022 [PCO 24939/2.0].

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson
Hon David Parker (Chair)
Hon Aupito William Sio
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG