



POLICY AND REGULATORY STEWARDSHIP

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

Date:	28 June 2022	Priority:	Medium
Security level:	In Confidence	Report number:	IR2022/328

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to extend the COVID-19 administrative flexibility measure for one year	19 July 2022

Contact for telephone discussion (if required)

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28 June 2022

Minister of Revenue

Extending the Commissioner's COVID-19 administrative flexibility

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 for one year, via an Order in Council.

Background

2. The discretionary power 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. This discretionary power was introduced on 30 April 2020 as part of a range of response measures to COVID-19.¹ The power 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. This power was extended from 1 October 2021 to 30 September 2022. Officials recommended this initial extension to enable the Commissioner to respond quickly in the event taxpayers are further impacted by COVID-19 (IR2021/303 refers).
4. The purpose of the power is to provide 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, six variations in 2021 and 18 variations in 2022. Requests for additional variations would be declined if they are able to be resolved using the Commissioner's care and management powers.
8. Generally, variations are targeted and time limited. For example, a variation published on 23 June 2022 extended the due date for filing statements of R&D loss

¹ The *COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020* inserted the discretionary power into the *Tax Administration Act 1994*.

tax credits and R&D repayment tax from 1 April 2022 until 31 August 2022. The variation is 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.

An extension

9. The discretionary power may be extended by Order in Council, on the recommendation of the Minister of Revenue, if it is reasonably necessary in the circumstances because of the continuing impact of COVID-19 related measures or circumstances.
10. We recommend the power be extended for another year from 1 October 2022 to 30 September 2023. We think it is necessary given the continued impact of COVID-19 and the threat of new variants in the future.
11. Although there is no longer such pressing urgency for variations, the continued impact of COVID-19 on taxpayer's compliance obligations remains, demonstrated through the Commissioner recently issuing a variation on 23 June 2022. Retaining the power also ensures the Commissioner will be able to respond quickly in the event of future outbreaks and/or lockdowns which may impact taxpayer's ability to meet their obligations.

Administrative implications

12. 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

13. 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.
14. 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.
15. 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

16. Treasury has been consulted on this report.

Next steps

17. 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.
18. 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.
19. 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 on 25 August, or a waiver to the 28-day rule must be obtained.

Recommended action

We recommend that you:


1. **agree** to extend the COVID-19 administrative flexibility measure for one year (to 30 September 2023).

Agreed/Not agreed
2. **note** the fiscal impact of the decision is unable to be quantified but is likely to be minor.

Noted
3. **authorise** the Parliamentary Counsel office to draft an Order in Council to extend the Commissioner's discretionary power.

Authorise/Not authorised

s 9(2)(a)



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Hon David Parker
Minister of Revenue
/ /2022