

Hon David Parker, Minister of Revenue

Information Release

Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2022

December 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-0201>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2022-454	Policy report	Increase in FBT prescribed rate of interest	29 September 2022
2	LEG-22-SUB-0201	Cabinet paper	Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2022	17 November 2022
3	LEG-22-MIN-0201	Minute	Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2022	17 November 2022

Additional information

The Cabinet paper was considered by the Legislation Cabinet Committee on 17 November 2022 and confirmed by Cabinet on 28 November 2022.

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

- Order in Council: Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2022¹

Note: Recommendation a. in report IR2022-454 has an incorrect date. The date the new rate will be effective from, which is correctly recorded in all other documents, is 1 January 2023 and not 1 January 2022.

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

¹ <https://www.legislation.govt.nz/regulation/public/2022/0306/latest/whole.html>

Accessibility

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POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Increase in FBT prescribed rate of interest

Date:	29 September 2022	Priority:	Medium
Security level:	In Confidence	Report number:	IR2022/454

Action sought

	Action sought	Deadline
Minister of Revenue	<p>Agree to adjust the FBT prescribed rate of interest as set out in the report.</p> <p>Sign and refer the attached paper to the Cabinet Office for consideration at the LEG meeting on 10 November 2022.</p>	3 November 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
Paul Fulton	Principal Policy Advisor	s 9(2)(a)
Bradd Forster	Policy Advisor	

29 September 2022

Minister of Revenue

Increase in FBT prescribed rate of interest

Purpose

1. This report seeks your agreement to raise the prescribed interest rate used to calculate fringe benefit tax (FBT) on low-interest loans provided by employers to employees from 4.78% to 6.71%. This change is required to align the rate with current market interest rates. The new rate should apply from the beginning of January 2023.
2. An Order in Council is required to make this change. Therefore, this report also seeks your approval for the Parliamentary Counsel Office (PCO) to draft an Order in Council to raise the rate. As changes to the FBT prescribed interest rate have become a routine matter, we consider that your approval is sufficient for PCO to draft the Order. PCO can provide the Order in Council directly to Cabinet Office.

Background

3. The FBT rules tax non-cash benefits provided to employees. Included in the definition of 'fringe benefit' is any employment-related loan on which the employer is charging a rate of interest that is below the market rate. The interest differential is taxable. A prescribed rate set by regulations is used as a proxy for the market rate of interest, to save employers the compliance costs associated with determining the market rate relevant to loans that they have provided to their employees.
4. The Income Tax Act 2007 permits the making of regulations by Order in Council to set a prescribed rate of interest for the purpose of calculating FBT on low-interest loans. Once a rate is set, it remains the prescribed rate until changed by a subsequent Order in Council.
5. The prescribed interest rate was last changed from 4.50% to 4.78%, effective from the quarter beginning 1 July 2022.

Determination of appropriate prescribed rate

6. The Reserve Bank conducts a survey of first mortgage housing interest rates on the last day of each month, producing a 'floating first mortgage new customer housing rate'. The rate is calculated as the weighted average interest rate for the surveyed institutions, the weightings being based on each institution's share of total lending for housing purposes. This Reserve Bank series is a suitable indication of general market interest rates and is therefore used as the benchmark for setting the FBT prescribed rate.
7. The floating first mortgage new customer housing rate of 6.71% for August 2022 indicates that the current FBT prescribed rate of 4.78% is lower than the prevailing market rate.
8. Longstanding administrative policy has been to adjust the FBT prescribed interest rate when there has been a change in the floating first mortgage new customer housing rate of 20 basis points or more. We recommend that the rate be adjusted to ensure that there is no long-term misalignment.

Process issues

9. When regulations are made declaring the rate of interest applying to employment-related loans, they apply to quarters starting from a date at least 1 month following the date the regulations were made.
10. The Order in Council should be referred to the Cabinet Office by 3 November 2022, so that it can be considered by the Cabinet Legislation Committee on 10 November 2022. PCO has arranged for the Order in Council to be provided directly to the Cabinet Office.
11. A Cabinet paper recommending that Cabinet approve the Order in Council and authorise its submission to the Executive Council is attached. We recommend that you lodge the Cabinet paper with the Cabinet Office by 10am on Thursday 3 November 2022.

Revenue implications

12. Raising the FBT prescribed interest rate to 6.71% will increase the amount of FBT that will be collected over 2022/23 by approximately \$1.83 million. This amount is estimated to increase to \$3.66 million per year over the current forecast period (2023/24 to 2025/26).

Vote Revenue	2022/23	2023/24	\$millions increase/(decrease)		
			2024/25	2025/26	2026/27 & out years
FBT revenue	2.54	5.08	5.08	5.08	5.08
Company tax	(0.71)	(1.42)	(1.42)	(1.42)	(1.42)
Net Revenue	1.83	3.66	3.66	3.66	3.66
Impact on Operating balance	1.83	3.66	3.66	3.66	3.66

13. A forecasting adjustment will be necessary to account for the increase in expected FBT revenue. It will not affect the balance of the tax policy work programme scorecard.

Consultation

14. The Treasury has been consulted in the preparation of this report and the attached Cabinet paper.

Recommended action

We recommend that you:

- a. **agree** that the FBT prescribed rate of interest for low-interest employment-related loans should be raised to 6.71%, effective from 1 January 2022.

Agreed/Not agreed

- b. **note** that increasing the prescribed rate to 6.71% will result in an increase in revenue of approximately \$1.83 million over the 2022/23 year and \$3.66 million per year over the remaining forecast period.

Noted

- c. **agree** that the Parliamentary Counsel Office should be instructed to draft an Order in Council to implement the proposed rate change.

Agreed/Not agreed

- d. **approve** and **lodge** the attached Cabinet paper to the Cabinet Office by 10am Thursday 3 November 2022 for consideration by Cabinet Legislation Committee at its meeting on 10 August 2022.

Agreed/Not agreed

Paul Fulton

Principal Policy Advisor
Policy and Strategy

Hon David Parker

Minister of Revenue
/ /2022

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

INCOME TAX (FRINGE BENEFIT TAX, INTEREST ON LOANS) AMENDMENT REGULATIONS 2022 (NO 2)

Proposal

- 1 This paper seeks the Cabinet Legislation Committee's agreement to submit an Order in Council amending the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2022 (No 2) to the Executive Council. The proposal is to increase the FBT prescribed interest rate for low-interest, employment-related loans from 4.78% to 6.71%, in line with an increase in market interest rates.
- 2 Changes to the prescribed interest rate are a routine matter and do not involve a change of policy. The methodology used for setting the rate has been applied consistently since the early 1990s.

Policy

- 3 The fringe benefit tax (FBT) rules tax non-cash benefits provided to employees. Included in the definition of 'fringe benefit' is any employment-related loan on which the employer is charging a rate of interest that is below the market rate. The interest differential is taxable. A prescribed rate set by regulations is used as a proxy for the market rate of interest to save employers the compliance costs associated with determining the market rate relevant to loans that they have provided to their employees.
- 4 The Income Tax Act 2007 ('the Act') allows regulations to be made to set the prescribed rate. Once a rate is set, it remains the prescribed rate of interest until changed by a subsequent Order in Council. The current FBT prescribed rate, which has applied since 1 July 2022, is 4.78%.
- 5 The prescribed rate of interest is based on a Reserve Bank survey of first mortgage housing interest rates on the last day of each month ('floating first mortgage new customer housing rate'). This is calculated as the weighted average interest rate for the surveyed institutions, the weightings being based on each institution's share of total lending for housing purposes. This Reserve Bank series is selected as the benchmark for setting the FBT prescribed rate because it is seen as a good indication of market interest rates.

Timing

- 6 The Act provides that when regulations to change the prescribed rate of interest are made, they apply to quarters starting at least one month following the date the regulations were made by the Governor General by Order in Council. Regulations that reduce the rate may apply for the current quarter if made at least one month before the end of the quarter.
- 7 In accordance with the Act, I recommend that the regulations to raise the rate have effect from 1 January 2023 – the beginning of the next quarter. No waiver of the 28-day rule is required.

Compliance

- 8 The regulations comply with each of the following, where applicable:
- | | | |
|-----|---|--------------------|
| 8.1 | the principles of the Treaty of Waitangi | Not applicable |
| 8.2 | the New Zealand Bill of Rights Act 1990 | Not applicable |
| 8.3 | the Human Rights Act 1993 | Not applicable |
| 8.4 | the principles and guidelines set out in the Privacy Act 1993 | Not applicable |
| 8.5 | relevant international standards and obligations | Not applicable |
| 8.6 | the Legislation Guidelines (2018 edition) which are maintained by the Legislation Design and Advisory | Committee Complies |

Regulations Review Committee

- 9 Officials consider that there are no grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

- 10 The regulations have been certified by Parliamentary Counsel as being in order for submission to Cabinet.

Impact Analysis

- 11 The proposal is of a minor and mechanical nature and does not substantially alter existing arrangements. Therefore, a regulatory impact assessment is not required.
- 12 The proposal will not increase compliance costs as it is simply a change in the prescribed interest rate.

Publicity

13 Inland Revenue will publish an article about these changes in its *Tax Information Bulletin*.

Proactive Release

14 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

15 The Treasury has been consulted in the preparation of this paper.

Revenue implications

16 Raising the prescribed interest rate to 6.71% will increase the amount of FBT that will be collected by approximately \$1.83 million over the 2022/23 year and \$3.66 million per year over the remaining forecast period.

Recommendations

- 17 I recommend that the Cabinet Legislation Committee:
- a. **note** that the regulations set the prescribed rate of interest for calculating the taxable benefit of low-interest, employment-related loans;
 - b. **agree** that, consistent with the results of the Reserve Bank’s survey for August 2022, the FBT prescribed rate of interest should be raised from 4.78% to 6.71% from the quarter commencing on 1 January 2023;
 - c. **note** the following changes as a result of the decision in recommendation 2, with a corresponding impact on the operating balance:

Vote Revenue	\$millions increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & out years
FBT revenue	2.54	5.08	5.08	5.08	5.08
Company tax	(0.71)	(1.42)	(1.42)	(1.42)	(1.42)
Net Revenue	1.83	3.66	3.66	3.66	3.66
Impact on Operating balance	1.83	3.66	3.66	3.66	3.66

- d. **note** that the changes are forecast changes and do not have appropriation implications;
- e. **authorise** the submission to the Executive Council of the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2022 (No 2).

Authorised for lodgement

Hon David Parker

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.

Income Tax FBT Interest on Loans Amendment Regulations 2022 (No 2)

Portfolio Revenue

On 17 November 2022, the Cabinet Legislation Committee:

- 1 **noted** that the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2022 set the prescribed rate of interest for calculating the taxable benefit of low-interest, employment-related loans;
- 2 **agreed** that, consistent with the results of the Reserve Bank's survey for August 2022, the FBT prescribed rate of interest should be raised from 4.78% to 6.71% from the quarter commencing on 1 January 2023;
- 3 **noted** the following changes as a result of the decision in paragraph 2, with a corresponding impact on the operating balance:

Vote Revenue	2022/23	2023/24	\$millions increase/(decrease)		
			2024/25	2025/26	2026/27 & out years
FBT revenue	2.54	5.08	5.08	5.08	5.08
Company tax	(0.71)	(1.42)	(1.42)	(1.42)	(1.42)
Net Revenue	1.83	3.66	3.66	3.66	3.66
Impact on Operating balance	1.83	3.66	3.66	3.66	3.1

- 4 **noted** that the changes are forecast changes and do not have appropriation implications;
- 5 **authorised** the submission to the Executive Council of the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2022 [PCO 25134/4.0]

Rebecca Davies
Committee Secretary

Attendance: see over

Present:

Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Michael Wood (Chair)
Hon Kiri Allan
Hon Dr David Clark
Hon Meka Whaitiri
Hon Kieran McAnulty
Dr Duncan Webb, MP

Officials present from:

Officials Committee for LEG