

In Confidence

Office of the Minister of Revenue

Chair, Cabinet

## **Tax Administration (January Cyclone Event) Order 2023**

### **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 Cyclone Hale.
- 2 An Order in Council is required to allow Inland Revenue to remit this interest (the Order).

### **Policy**

- 3 Cyclone Hale made landfall in the upper North Island on 8 January 2023. It brought periods of high intensity, and in some places sustained, rain and winds across much of the North Island, and the top of the South Island, before moving offshore on 12 January 2023. Northland, Coromandel, Gisborne, Hawke's Bay (Wairoa), and coastal Wairarapa areas were particularly hit by heavy rain, with the result that some communities lost power, telecommunications, and essential road access.
- 4 A medium-scale adverse event, in accordance with Government's Primary Sector Recovery Policy, has been announced for the Gisborne and Wairarapa districts in response to the impacts of Cyclone Hale, between 8 and 12 January 2023. A local state of emergency was also declared for Gisborne on 10 January.
- 5 Independent of decisions made under the Government's Primary Sector Recovery Policy, Inland Revenue officials have been in discussion with stakeholders regarding the level of disruption caused by Cyclone Hale to persons meeting their tax obligations. Based on these discussions, my officials advise that the flooding and weather-related damage caused by Cyclone Hale in Coromandel, Gisborne, Northland, Wairarapa, and Wairoa districts meets the statutory criteria for interest remission set out in the Tax Administration Act 1994 [paragraph 8 refers]. This is because some taxpayers in these districts have been significantly adversely affected to the extent that they have been unable to pay their tax on time and/or accurately forecast provisional tax.
- 6 There are several key tax payment dates in January. GST returns and payments, as well as provisional income tax instalments, were required for some taxpayers on 16 January. PAYE payments were also due on 20 January from many taxpayers in the affected areas. Given the extent of the damage in the affected areas, these returns and payments are likely to have been missed, resulting in interest charges and penalties.

- 7 Inland Revenue has the power to provide relief from late payment and late filing penalties for taxpayers affected by adverse events, at the Commissioner's discretion. However, this relief does not extend to the remission of use of money interest charged by Inland Revenue to compensate the Crown for the loss of the use of revenue. 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 9.21%. Without relief, the late payment of tax results in the automatic statutory imposition of interest.
- 8 The Tax Administration Act 1994 provides for an Order in Council to allow Inland Revenue to remit interest where:
  - 8.1 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;
  - 8.2 the non-payment of tax results in the imposition of interest; and
  - 8.3 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.
- 9 The flooding and damage caused by Cyclone Hale meets the criteria for interest remission. The Order authorises Inland Revenue to remit use of money interest incurred by taxpayers whose ability to pay their tax on time, and/or make an accurate forecast of provisional tax, was significantly adversely affected by Cyclone Hale. For the purposes of the Order, the emergency event is defined as the floods and other damage that occurred in Coromandel, Gisborne, Northland, Wairarapa, and Wairoa districts as a result of Cyclone Hale, which crossed the North Island of New Zealand starting 8 January and ending 12 January 2023.
- 10 The Order will commence on its notification in the *Gazette* and will expire on 31 March 2023.

### **Timing and 28-day Rule**

- 11 A waiver of the 28-day rule is sought, to enable the regulations to come into force on 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 before the making of the Order.

### **Compliance**

- 12 Section 183ABA of the Tax Administration Act 1994 provides the statutory authority for the Governor-General by Order in Council to declare an event to be an emergency event and allow Inland Revenue to remit use of money interest. This event meets the Tax Administration Act's qualifying criteria.

- 13 The Order 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      |

### **Financial Implications**

- 14 The baseline forecasts do not include the emergency event, nor the potential use of money interest charges should the event trigger additional debt. Remission of use of money interest for significantly adversely affected taxpayers will not affect existing fiscal baselines.

### **Regulations Review Committee**

- 15 Officials believe there are no grounds for the Regulations Review Committee to draw the Order to the attention of the House under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 16 The Order has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet. The regulations will come into force earlier than the 28<sup>th</sup> day after the date of their notification in the *Gazette*.

### **Impact Analysis**

#### **Regulatory Impact Assessment**

- 17 The Treasury's Regulatory Impact Analysis team has determined that the proposed remission of use of money interest to assist taxpayers dealing with the impacts of Cyclone Hale is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it is intended to alleviate the short-term impacts of a declared emergency event and it is required urgently to be effective (making a complete, robust and timely Regulatory Impact Statement unfeasible).

#### **Climate Implications of Policy Assessment**

- 18 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**

- 19 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**

- 20 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**

- 21 Inland Revenue officials have consulted with the Treasury, and the Ministry for Primary Industries, which agree with the proposal in this paper. Federated Farmers were also consulted and agree with the Order. The Department of the Prime Minister and Cabinet, and Chartered Accountants Australia and New Zealand have been informed of the 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 is due to the effects of an emergency event declared by Order in Council.
- 2 Note that the event described as the January Cyclone 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 (January Cyclone Event) Order 2023.
- 4 Note that this remission of interest will not affect 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 on their notification in the Gazette.

Authorised for lodgement

Hon David Parker

Minister of Revenue