

Hon David Parker, Minister of Revenue

Information Release

Tax Administration (January Cyclone Event) Order 2023

February 2023

Availability

This information release is available on Inland Revenue's tax policy website at <https://taxpolicy.ird.govt.nz/publications/2023/2023-ir-cab-23-sub-0003>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2023-012	Policy report	Tax Administration (January Cyclone Event) Order 2023	17 January 2023
2	CAB-23-SUB-0003	Cabinet paper	Tax Administration (January Cyclone Event) Order 2023	19 January 2023
3	CAB-23-MIN-0003	Minute	Tax Administration (January Cyclone Event) Order 2023	25 January 2023

Additional information

The Cabinet paper was considered and confirmed by Cabinet on 25 January 2023.

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

- Order in Council: Tax Administration (January Cyclone Event) Order 2023¹

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 section 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

Accessibility

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¹ Available at <https://www.legislation.govt.nz/regulation/public/2023/0001/latest/whole.html>

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POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Tax Administration (January Cyclone Event) Order 2023

Date:	17 January 2023	Priority:	High
Security level:	In Confidence	Report number:	IR2023/012

Action sought

	Action sought	Deadline
Minister of Revenue	Approve and lodge the attached paper to Cabinet office	10am, Thursday 19 January 2023

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]

17 January 2023

Minister of Revenue

Tax Administration (January Cyclone Event) Order 2023

1. This report recommends you approve and lodge the attached paper to Cabinet approving an Order in Council (the Order) to remit interest as a tax relief measure for taxpayers affected by the flooding and weather-related damage experienced in parts of the North Island between 8 and 12 January 2023 as a result of Cyclone Hale. The Order would declare the recent cyclone event as an emergency event for the purposes of the Inland Revenue Acts.¹
2. The Order would permit Inland Revenue to remit use of money interest (UOMI) charged on the late payment of tax. The current rate of UOMI on underpayments of tax is now 9.21% (from 17 January 2023).
3. We also 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 date without incurring UOMI.

Background

5. 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.
6. 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. A state of emergency was declared for Gisborne. Other areas of the North Island, such as Auckland, Taranaki, and Marlborough were also affected but did not sustain material damage to key infrastructure.
7. The Minister for Rural Communities has declared a medium-scale adverse event for Gisborne and the Wairarapa districts. We note that areas affected by Cyclone Hale, such as Northland and Wairoa, are under coverage of earlier medium-scale declarations for events in 2022.²

Impact of Cyclone Hale on taxpayers

8. The level of disruption resulting from Cyclone Hale has, or will, significantly adversely affect the ability of some taxpayers to estimate provisional tax or to make a required payment of tax before its due date. As a result of Cyclone Hale, taxpayers (rural and non-rural) in Northland, Coromandel, Gisborne, Wairarapa, and Wairoa need to focus on the immediate effects of this event rather than their tax affairs. Following Inland Revenue's Business Transformation, taxpayers are encouraged to file returns and make payments electronically. This places a greater reliance on power and telecommunications and it is therefore that relief to be provided to

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 Cyclone Hale between 8 and 12 January 2023.

² A medium-scale adverse event declared in March 2022 for Gisborne and Wairoa. A medium scale adverse event was also declared in August 2022 for the Far North and Top of the South Island.

taxpayers when these services are disrupted as a result of flooding or other weather-related damage.

9. There are several key tax payment dates in January. GST returns and payments, as well as provisional tax instalments were required by 16 January. PAYE payments are due by 20 January. Late payment of these tax types results in UOMI being automatically imposed. The number of taxpayers affected by the flooding is not yet known.
10. Relief from late payment and late filing penalties is already available for taxpayers affected by Cyclone Hale. However, this relief does not extend to the remission of UOMI charged to compensate the Crown for the loss of the use of revenue. This is because the remission of UOMI requires a higher threshold, such as a natural disaster, as well as Cabinet approval before UOMI relief can be provided.

Order in Council: Tax Administration (January Cyclone Event) Order 2023

11. The Tax Administration Act 1994³ provides for the making of an Order in Council to allow Inland Revenue to remit UOMI when:
 - 11.1 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;
 - 11.2 this non-payment results in the imposition of UOMI; and
 - 11.3 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.
12. The disruption caused by Cyclone Hale meets the criteria for remission. The Order would allow Inland Revenue to remit UOMI incurred by taxpayers whose ability to pay their tax on time, and/or accurately forecast provisional tax, was significantly adversely affected by the flooding and other weather-related damage.
13. For the purposes of the Order, the emergency event is defined as the floods and other damage that occurred in Northland, Coromandel, Gisborne, 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. Although the event definition includes some lesser affected areas, we recommend defining the area widely, as taxpayers in some areas are still experiencing the cumulative effects of adverse weather events occurring in the latter part of 2022. Our reasons for the districts covered by the Order are set out below:

³ Section 183ABA refers.

District	Reason
Coromandel	Inland Revenue considers that there will be taxpayers who will be significantly adversely affected because of the cyclone's impact on tourism and supporting industries and will be unable to make an accurate forecast of provisional tax. We also note that key infrastructure such as roads and communications are potentially at ongoing risk.
Gisborne	A medium-scale adverse event has been declared for this district.
Northland	This district is still recovering from a medium-scale adverse event from 2022. Federated Farmers advises that the area is under severe economic stress. They note that while conditions before Cyclone Hale have been ideal for growing, the effect of the heavy rain has affected (destroyed) some yields with a corresponding effect on farmer cash flows. We understand that fruit and vegetable crops have been significantly affected. As such we consider that there will be taxpayers who will be materially affected and unable to make an accurate forecast of provisional tax.
Wairoa	This district is still recovering from a medium-scale adverse event from 2022. Cyclone Hale disrupted communications and power in the area.
Wairarapa	A medium-scale adverse event has been declared for this district.

14. While the Order allows Inland Revenue to remit amounts of interest incurred before the Order is made, 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. 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.
15. The Order will expire on 31 March 2023. Tax debts that remain unpaid from PAYE, GST or provisional tax obligations would incur interest from 1 April 2023.

Other tax relief for taxpayers

16. Under existing administrative powers, Inland Revenue is offering relief from late payment and late filing penalties for taxpayers affected by the Cyclone Hale. Farmers with income equalisation accounts who have been affected by flooding in Gisborne and the Wairarapa are able to make late deposits and/or early withdrawals.
17. Some taxpayers may, under the circumstances, have lost some or all of their tax records. Inland Revenue is able to manage this situation under current law.
18. Changes made in 2021 which give favourable treatment to donated trading stock will also be of assistance to support recovery in affected districts.
19. Inland Revenue will take a considered, but sympathetic, approach to taxpayers that have been affected by localised flooding and damage from Cyclone Hale but are outside the areas specified in the Order.

Administrative implications

20. We have not noticed an increase in taxpayer contacts requesting relief as a result of being affected by the recent weather events. However, experience suggests that taxpayers in these types of circumstances often do not turn their minds to their tax obligations until after other priority tasks have been attended to.
21. The Order does not have any implications for Inland Revenue's technology systems.

Revenue implications

22. 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 covered districts, will not affect existing fiscal baselines.

Consultation

23. Our advice has been informed by advice from the Ministry for Primary Industries. The Treasury has been consulted as part of the preparation of this report. The Department of the Prime Minister and Cabinet has been informed.
24. We have consulted with Federated Farmers New Zealand. They support the proposed interest remission relief for the affected districts. Chartered Accountants Australia and New Zealand has also been informed.

Next steps

25. If you agree to the recommendations in this report, we recommend you approve and lodge the attached paper to Cabinet for its meeting on 25 January 2023. For the paper to be considered at that meeting, it will need to be lodged with Cabinet Office by 10am, Thursday 19 January 2023.
26. 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) **Approve** and **lodge** the attached paper to Cabinet on or before 10am, Thursday 19 January 2023, for a meeting on 25 January 2023.

Approved and lodged/Not approved

- (b) **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
/ /2023

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 28th 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



Cabinet

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 (January Cyclone Event) Order 2023

Portfolio **Revenue**

On 25 January 2023, Cabinet:

- 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 is due to the effects of an emergency event declared by Order in Council;
- 2 **noted** 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 **authorised** the submission to the Executive Council of the Tax Administration (January Cyclone Event) Order 2023 [PCO 25258/6.0];
- 4 **noted** that this remission of interest will not affect fiscal baselines;
- 5 **noted** that a waiver of the 28-day rule is sought:
 - 5.1 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 Tax Administration (January Cyclone Event) Order 2023 (the Order);
 - 5.2 so that the Order can come into force on its notification in the Gazette;
- 6 **agreed** to waive the 28-day rule.

Rachel Hayward
Secretary of the Cabinet