



## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report: Tax Administration (January Flood Events) Order 2023**

<b>Date:</b>	2 February 2023	<b>Priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2023/031

### Action sought

	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Approve and lodge</b> the attached paper to Cabinet office	10am, Friday 3 February 2023

### Contact for telephone discussion (if required)

<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Peter Frawley	Policy Lead	s 9(2)(a)
Brandon Sloan	Principal Policy Advisor	

2 February 2023

Minister of Revenue

## **Tax Administration (January Flood Events) Order 2023**

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1. This report recommends that you approve and lodge the attached paper to Cabinet authorising 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 the upper North Island between 26 January and 3 February 2023. The Order would declare the flooding events as an emergency event for the purposes of the Inland Revenue Acts.<sup>1</sup>
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 9.21%.
3. We also recommend that the paper be submitted directly to Cabinet to ensure the relief is timely for those affected taxpayers.

### **Background**

4. Between 26 January and 3 February 2023, a series of fronts crossed the upper North Island delivering extremely heavy rain, high winds, and widespread flooding in the Northland, Auckland, Waikato (including Coromandel and Waitomo districts), and Bay of Plenty regions (the January Flood Events). States of emergency were declared for Auckland, Waitomo, and Northland.
5. In addition, the Minister for Rural Communities has declared the above regions to be the subject to a medium-scale adverse event.

### **New Emergency Order required**

6. The UOMI relief Inland Revenue can provide is confined to late payments/inaccurate provisional tax forecasts that result from the defined emergency event. Therefore, although similar Orders in Council may still be in effect for the same areas, for example, the Order in Council made in relation to Cyclone Hale on 25 January 2023, a new Order in Council would take into account the impacts of the January Flood Events.
7. Given the complexity and intensity of the weather events currently affecting New Zealand, we consider that other areas could be affected in the coming weeks. If this is the case, subsequent Orders in Council may be required to allow the remission of interest for taxpayers affected by those events.

### **Implications for taxpayers' obligations**

8. We have been in discussions with stakeholders regarding the level of disruption to persons meeting their tax obligations caused by the January Flood Events. Based on these discussions, we consider that the level of disruption resulting from the January Flood Events has, or will, significantly adversely affect the ability of some taxpayers to make a required payment of tax before its due date and/or to make accurate provisional tax forecasts. Because of the flooding, taxpayers in affected

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<sup>1</sup> 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 January Flooding Event between 26 January and 3 February 2023.

**In Confidence**

areas will understandably be prioritising recovery rather than their tax affairs. The number of taxpayers affected by the flooding is not yet known.

9. There are several tax payment dates in January and early February. 30 January was a payment/filing date for some GST and provisional taxpayers. 7 February is a key payment date for a range of tax types including income tax, FBT, Working for Families overpayments, and PAYE. Payments after these dates result in UOMI being automatically imposed. Relief from late payment and late filing penalties is already available for taxpayers affected by the January Flood Events. However, this relief does not extend to the remission of UOMI. This is because remitting 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 Flood Events) Order 2023**

10. The Tax Administration Act 1994<sup>2</sup> provides for the making of an Order in Council to allow Inland Revenue to remit UOMI when:
  - 10.1 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;
  - 10.2 this non-payment results in the imposition of UOMI; and
  - 10.3 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.
11. The disruption caused by the January Flood Events 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.
12. For the purposes of the Order, the emergency event is defined as the floods and other weather-related damage that occurred in the Northland, Auckland, Waikato and Bay of Plenty regions between 26 January and 3 February 2023.
13. 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.
14. The draft Cabinet Paper that accompanies this report proposes the waiver of the 28-day rule so that the Order can come into force on the day it is notified in the *Gazette*. It is anticipated that this will occur on 8 February 2023. The Order will expire on 30 April 2023. Tax debts that remain unpaid from GST, provisional tax, income tax, FBT, Working for Families repayments, and PAYE obligations would incur interest from 1 May 2023. If the recovery period for Auckland requires more time, the Tax Administration Act provides for ability to extend the duration of the proposed Order, or otherwise replace it.

**Other tax relief for taxpayers**

15. Under existing administrative powers, Inland Revenue is offering relief from late payment and late filing penalties for taxpayers affected by the January Flood Events. Because the Minister for Rural Communities has declared a medium-scale adverse

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<sup>2</sup> Section 183ABA refers.

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event for Northland, Auckland, Waikato and the Bay of Plenty, farmers in those regions with income equalisation accounts who have been affected by flooding will be able to make late deposits and/or early withdrawals.

16. As a result of the January Flood Events, some taxpayers may have lost some or all of their tax records. Inland Revenue is able to manage this situation under current law.
17. Changes made in 2021 which give favourable treatment to donated trading stock will also be of assistance to support recovery in affected areas. We note that a proposal to extend the duration of the relief to 31 March 2024 is to be considered by the Cabinet Legislation Committee on 23 February 2023.
18. Inland Revenue will take a considered, but sympathetic, approach to taxpayers that have been affected by localised flooding and damage from the January Flood Events but are outside the areas specified in the Order.

**Auckland Council Charitable Purposes Fund**

19. Auckland Council has advised that donations to support the relief effort in Auckland can be made to the Auckland Council Charitable Purposes Fund, which is an approved donee organisation with Inland Revenue. As an approved donee organisation, donors to the Fund will be eligible for the donation tax credit, or tax deductions, in respect of monetary donations made.

**R&D tax credit reporting deadlines**

20. We are also reviewing the impact of the January Flood Events on the ability of taxpayers to meet R&D Tax Incentive filing dates which are due 7 February. We will report to you separately on whether regulation is needed to extend the deadlines for these applications and returns.

**Administrative implications**

21. As at 1 February 2023, Inland Revenue has received over 160 contacts from taxpayers about their tax filing and payment obligations (mainly in respect of GST). We expect those numbers will increase sharply over the coming days.
22. The Order does not have any implications for Inland Revenue's technology systems.

**Revenue implications**

23. 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 areas, will not affect existing fiscal baselines.

**Consultation**

24. 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.
25. We have consulted with Federated Farmers New Zealand. They support the proposed interest remission relief for the affected areas. Chartered Accountants Australia and New Zealand has also been informed.

**Next steps**

26. If you agree to the recommendations in this report, we recommend you approve and lodge the attached paper to Cabinet for its meeting on 8 February 2023. For the paper to be considered at that meeting, it will need to be lodged with Cabinet Office by 10am, Friday 3 February 2023, as a late paper.
27. A copy of this report and attached Cabinet paper should be referred to the Minister of Finance, the Minister for Auckland, and the Minister for Rural Communities, for their information.

**Recommended action**

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We recommend that you:


- (a) **Approve** and **lodge** the attached Cabinet paper to Cabinet on or before 10am, Friday 3 February 2023 as late paper, for its meeting on 8 February 2023.

Approved and lodged/Not approved

- (b) **Refer** a copy of this report and the attached Cabinet paper to the Minister of Finance, the Minister for Auckland, 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