

# Hon David Parker, Minister of Revenue

## Information Release

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

March 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-0018>

#### Documents in this information release

#	Reference	Type	Title	Date
1	IR2023/031	Tax Policy Report	Tax Administration (January Flood Events) Order 2023	2 February 2023
2	CAB-23-SUB-0018	Cabinet Paper	Tax Administration (January Flood Events) Order 2023	3 February 2023
3	CAB-23-MIN-0018	Cabinet Minute	Tax Administration (January Flood Events) Order 2023	8 February 2023

#### Additional information

The Cabinet paper was considered and confirmed by Cabinet on 8 February 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 Flood Events) Order 2023<sup>1</sup>

#### 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

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<sup>1</sup> <http://www.legislation.govt.nz/regulation/public/2023/0003/11.0/contents.html>





## 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.

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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





In confidence

Office of the Minister of Revenue

Chair, Cabinet

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

### **Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the Tax Administration (January Flood Events) Order 2023 (the Order).
- 2 The Order is required to allow Inland Revenue to remit interest charges on late payments for taxpayers who have been significantly adversely affected by the flooding and weather-related damage that occurred across the upper North Island between 26 January and 3 February 2023.

### **Policy**

- 3 Between 26 January and 3 February 2023, a series of fronts crossed the upper North Island delivering heavy rain, high winds, and widespread flooding in the Northland, Auckland, Waikato (including Coromandel and Waitomo districts) and the Bay of Plenty regions (the January Flood Events). Local states of emergency were declared for Auckland, Northland, and Waitomo. The Minister for Rural Communities has also declared a medium-scale adverse event for these regions.
- 4 Inland Revenue officials 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, my officials advise that the flooding and weather-related damage caused in the Northland, Auckland, Waikato and Bay of Plenty regions meet the statutory criteria for interest remission set out in the Tax Administration Act 1994 [paragraph 7 refers]. This is because some taxpayers in these regions 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.
- 5 There are several tax payment dates in January and early February. 30 January was a payment/filing date for some GST and provisional tax taxpayers. 7 February is also a key payment date for a range of tax types including income tax, fringe benefit tax, Working for Families overpayments, and PAYE. Payments after these dates result in use of money interest being automatically imposed.
- 6 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 late payments of tax is 9.21%. Without relief, the late payment of tax results in the automatic statutory imposition of interest.

- 7 The Tax Administration Act 1994 provides for an Order in Council to allow Inland Revenue to remit interest where:
- 7.1 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;
  - 7.2 the non-payment of tax results in the imposition of interest; and
  - 7.3 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.
- 8 The relief Inland Revenue is able to provide under this type of Order in Council is confined to late payments and/or inaccurate provisional tax forecasts that result from the emergency event as defined in the Order in Council. 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 is required to support those taxpayers in regions affected by the January Flood Events.
- 9 I also note that given the complexity and intensity of the weather events currently affecting New Zealand, other areas could be affected in the coming weeks. If this is the case, additional Orders in Council may be needed to allow the remission of interest for taxpayers affected by those events.

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

- 10 The flooding and weather-related damage caused by the January Flood Events 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 the January Flood Events. For the purposes of the Order, the emergency event is defined as the floods and weather-related damage that occurred in the Northland, Auckland, Waikato and Bay of Plenty regions between 26 January and 3 February 2023.
- 11 While the Order allows Inland Revenue to remit amounts of interest incurred before the Order was made, it is desirable to authorise the relief as soon as possible. The practical effect of interest 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 immediate tax affairs.
- 12 The Order will commence on its notification in the *Gazette* and will expire on 30 April 2023. The Tax Administration Act provides that the duration of the proposed Order can be extended or replaced if by the beginning of April, a longer period of interest relief is required to support the regions affected by the January Flood Events.

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

- 13 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.

## Compliance

14 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.

15 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 2020	Not applicable
Relevant international standards and obligations	Not applicable
The Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee	Compliant

## Financial Implications

16 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

17 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

18 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

19 The Treasury's Regulatory Impact Analysis team has determined that this proposal to provide interest remission relief for taxpayers who have been adversely affected by the January Flood Events is exempt from the requirement to provide a Regulatory Impact Statement. This is granted on the grounds that it is intended to temporarily defer or extend legislative deadlines where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome.

## **Climate Implications of Policy Assessment**

- 20 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**

- 21 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**

- 22 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**

- 23 Inland Revenue officials have consulted with the Treasury, and the Ministry for Primary Industries. 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 Flood Events 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 Flood Events) 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

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

**Portfolio**                      **Revenue**

On 8 February 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 Flood Events 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 Flood Events) Order 2023;
- 4        **noted** that this remission of interest will not affect fiscal baselines;
- 5        **noted** 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        **agreed** to the waiver of the 28-day rule so that the regulations can come into force on their notification in the Gazette.

Rachel Hayward  
Secretary of the Cabinet