

In Confidence

Office of the Minister of Revenue

Chair, Cabinet

## **TAX ADMINISTRATION (RESEARCH AND DEVELOPMENT TAX CREDIT DEADLINES FOR TAXPAYERS AFFECTED BY WEATHER EVENTS) ORDER 2023**

### **Proposal**

1. This paper seeks Cabinet's agreement to submit an Order in Council making the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023 to the Executive Council.

### **Background**

2. Between 26 January 2023 and 3 February 2023, a series of fronts crossed the upper North Island delivering extremely heavy rain, high winds, and widespread flooding in the Auckland, Bay of Plenty, Northland, and Waikato regions (January flood events). Then, from 12 February 2023 and ongoing, Cyclone Gabrielle moved across the North Island, also resulting in heavy rain, high winds, and flooding.
3. These weather events have impacted the ability of some businesses enrolled in the Research and Development Tax Incentive (RDTI) to be able to file on time. Filing may be for either an approval (a general approval, a criteria and methodologies approval, or a variation of these approvals) or for a supplementary return to claim R&D tax credits. Both an approval application and a supplementary return must be filed in time to claim R&D tax credits for the year. The exact due dates for these filings vary depending on factors like the taxpayer's balance date and whether they have an extension of time for filing their income tax return. Inland Revenue has no operational discretion it can apply in response to the weather events to accept late RDTI filings.
4. On 8 February 2023, I recommended the Tax Administration (January Flood Events) Order 2023 be submitted to the Executive Council. This Order allows Inland Revenue to remit interest charged to taxpayers that were unable to pay their tax in full and on time because of the January flood events (CAB-23-MIN-0018 refers). However, this measure does not help businesses enrolled in the RDTI as there is no interest charged for a late filing; the business would instead be denied the RDTI for the entire year.

### **Policy**

5. The Tax Administration Act 1994 contains a broad power to extend, by Order in Council, the time provided for doing something under the Act. This includes

extending the deadline for businesses to file applications for approval or supplementary returns as required by the RDTI.

6. I therefore recommend the making of the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023.
7. This Order in Council would extend the due dates for relevant RDTI filings to 31 March 2023. This includes any RDTI deadline for approval applications, variations to those approvals, and supplementary returns that have a deadline falling between 26 January 2023 and 7 March 2023.
8. The eligibility criterion for an extension is that either or both of the January flood events and Cyclone Gabrielle significantly adversely affect the ability of the taxpayer to comply with the relevant RDTI filing deadline (falling between 26 January 2023 and 7 March 2023). This criterion would match the test used for the Tax Administration (January Flood Events) Order 2023.
9. If this Order in Council is not agreed to, then R&D businesses that would otherwise have filed on time but for these weather events would instead be denied those tax credits for the year. The affected group is those taxpayers that are already being impacted by these weather events, so to deny them R&D tax credits due to their inability to meet the original filing deadline would be harsh.
10. Some businesses have contacted Inland Revenue/Callaghan Innovation to notify that they will not be able to meet the original deadline for RDTI filing due to the weather events, or to request an extension for businesses that are affected.
11. As of 1 February 2023, there are 1,800 businesses enrolled in the RDTI. Most of those businesses use standard March balance dates, which do not give rise to any deadlines that are likely to be affected by the weather events.
12. Non-standard balance dates that give rise to potentially impacted RDTI deadlines include income years ending in January, July, August, September, and December. The number of businesses enrolled in the RDTI with one of these balance dates is 264. However, the actual number of taxpayers that are expected to make use of the proposed extension is likely to be much lower than 264 because some of these businesses:
  - 12.1 are not intending to claim the RDTI for the relevant income year;
  - 12.2 had already filed prior to the weather events;
  - 12.3 are not based around the areas of the weather events or are otherwise not affected.

### **Timing and 28-Day Rule**

13. I propose that the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023 comes into force as soon as possible. This would require a waiver of the 28-day rule for regulations coming into force.

14. A waiver is sought on the grounds that it is in the best interests of both taxpayers and the Government. Not waiving the 28-day rule would lengthen the uncertainty faced by R&D businesses affected by the weather events regarding whether they are approved to undertake certain R&D activities with the support of the RDTI. Alternatively, they may face a delay in receiving their tax credit altogether during a period in which those funds may be important for coping with the impact of the weather events. No waiver would also increase Inland Revenue's processing backlog as applications/returns would not be able to be processed for a further 28 days.

### **Financial implications**

15. The Order in Council does not have any financial implications.
16. Baseline forecasts of RDTI disbursements do not factor in the occurrence of the weather events nor the consequent reduction in RDTI disbursements due to late filings (in the absence of the proposed extension). Extending the relevant RDTI deadlines for taxpayers significantly adversely affected in their ability to comply with those deadlines effectively restores the baseline forecasts.

### **Compliance**

17. The Order in Council complies with:
  - 17.1 the principles of the Treaty of Waitangi;
  - 17.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 17.3 the principles and guidelines set out in the Privacy Act 1993;
  - 17.4 relevant international standards and obligations;
  - 17.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Regulations Review Committee**

18. There are no anticipated grounds for the Regulations Review Committee to draw the attached Order in Council to the attention of the House.

### **Certification by Parliamentary Counsel**

19. The Parliamentary Counsel Office has certified that the attached Order in Council is in order for submission to the Executive Council, provided that the 28-day rule is waived.

## Impact Analysis

### Regulatory Impact Assessment

20. The Treasury's Regulatory Impact Analysis team has determined that the proposal to extend RDTI filing deadlines in response to recent weather events is exempt from the requirement to provide a Regulatory Impact Statement. This exemption is granted on the grounds that it is intended to manage the direct actions taken to protect the public in response to a declared emergency event and 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

21. 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.

### Communications

22. Inland Revenue will publish an article about this Order in Council in its *Tax Information Bulletin*.

### Proactive Release

23. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions within 30 working days of Cabinet making final decisions.

### Consultation

24. Inland Revenue, the Treasury, the Ministry of Business, Innovation and Employment, and Callaghan Innovation were consulted on this paper. The Department of the Prime Minister and Cabinet was informed.

### Recommendations

The Minister of Revenue recommends that Cabinet:

1. **note** that the Research and Development Tax Incentive has a range of due dates by which businesses must file applications for approval and supplementary returns in order to be eligible for R&D tax credits;
2. **note** that the Tax Administration Act 1994 contains a broad power to extend, by Order in Council, the time provided for doing something under the Act;
3. **note** that the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023 would extend the deadlines in recommendation 1 until 31 March 2023 for taxpayers with an RDTI filing deadline between 26 January 2023 and 7 March 2023 if either or both of the January flood

events and Cyclone Gabrielle significantly adversely affect their ability to comply with the filing deadline;

4. **authorise** the submission to the Executive Council of the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023;
5. **note** that a waiver of the 28-day rule is sought:
  - 5.1 so that the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023 can come into force as soon as possible;
  - 5.2 on the grounds that not waiving the rule will:
    - 5.2.1 lengthen the uncertainty faced by R&D businesses affected by the weather events regarding their RDTI approval status;
    - 5.2.2 delay receipt of R&D tax credits during a period in which those funds may be important for coping with the impact of the weather events;
    - 5.2.3 increase the processing backlog for Inland Revenue as applications/returns will not be able to be processed for a further 28 days;
6. **agree** to waive the 28-day rule so that the regulations can come into force as soon as possible.

Authorised for lodgement

Hon David Parker  
Minister of Revenue