

# Hon David Parker, Minister of Revenue

## Information Release

### Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather 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-0031>

#### Documents in this information release

#	Reference	Type	Title	Date
1	IR2023/040	Policy report	Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023	14 February 2023
2	CAB-23-SUB-0031	Cabinet paper	Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023	20 February 2023
3	CAB-23-MIN-0031	Cabinet minute	Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023	20 February 2023

#### Additional information

The Cabinet paper was considered and confirmed by Cabinet on 20 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 (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather 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

<sup>1</sup> <https://www.legislation.govt.nz/regulation/public/2023/0011/latest/whole.html>

## **Accessibility**

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## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report: Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023**

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<b>Date:</b>	14 February 2023	<b>Priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2023/040

### Action sought

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	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<p><b>Agree</b> to recommendations</p> <p><b>Authorise</b> the lodgement of the attached Cabinet paper</p> <p><b>Refer</b> a copy of this report to the Minister of Research, Science and Innovation</p>	10am Thursday 16 February

### Contact for telephone discussion (if required)

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Chris Gillion	Policy Lead	s 9(2)(a) [REDACTED]
David Cuellar	Senior Policy Advisor	s 9(2)(a) [REDACTED]

14 February 2023

Minister of Revenue

## **Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023**

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### **Purpose**

1. This report seeks your agreement to an extension of filing deadlines for the Research and Development Tax Incentive (RDTI) in response to:
  - 1.1 the January flood events throughout Auckland, Bay of Plenty, Northland, and Waikato; and
  - 1.2 Cyclone Gabrielle.
2. This extension would be given effect to by an Order in Council, and we also seek your authorisation to issue a drafting instruction to the Parliamentary Counsel Office to draft the Order.
3. This report also recommends that you authorise the lodgement of the attached Cabinet paper for consideration either at a Cabinet Legislation Committee meeting or directly at a Cabinet meeting.
4. A copy of this report and the attached Cabinet paper should be referred to the Minister of Research, Science and Innovation for their information.

### **Background**

5. 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.
6. These weather events have impacted the ability of some businesses enrolled in the 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 those 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.
7. On 8 February 2023, you recommended to Cabinet the Tax Administration (January Flood Events) Order 2023 that effectively allows Inland Revenue to remit use of money 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). This measure does not help businesses enrolled in the RDTI as there is no interest charged for a late filing. An approval application or supplementary return filed after the applicable deadline is instead declined altogether, meaning the business would be denied the RDTI for the year.

8. In addition to remitting use of money interest, we have previously indicated to you other tax relief being deployed for taxpayers more broadly than pertains to the RDTI, including relief from late payment and late filing penalties, concessionary treatment for donated trading stock, and early withdrawals from/late deposits into income equalisation accounts to assist farmers and growers (IR2023/031 refers).

### **Order in Council**

9. 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 would include extending the deadline for businesses to file applications for approval or supplementary returns as required by the RDTI.
10. In accordance with this power, we recommend that you make an Order in Council extending the due dates for relevant RDTI filings. Specifically, we recommend that any RDTI deadline for approval applications, variations to those approvals, and supplementary returns that falls between 26 January 2023 and 7 March 2023 be extended to 31 March 2023.
11. We recommend that the eligibility criterion for businesses to be given 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 use of money interest remission during emergency events, including for the Tax Administration (January Flood Events) Order 2023 that you recently recommended to Cabinet.
12. 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 will 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 may be seen as harsh.
13. Some businesses have been in contact 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.
14. 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.<sup>1</sup>
15. 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 (mostly December). 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:
  - 15.1 are not intending to claim the RDTI for the relevant income year;
  - 15.2 had already filed prior to the weather events;
  - 15.3 are not based around the areas of the weather events or are otherwise not affected.

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<sup>1</sup> For example, the general approval application due date is the seventh day of the second month after the end of the income year. For a 31 March 2023 balance date, that due date would be 7 May 2023, which is unlikely to be affected by the weather events (and would not be covered by our recommendation). Therefore, not all taxpayers enrolled in the RDTI are affected; whether or not a business is affected depends on their balance date. IR2023/040: Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023

## Timing

16. We are engaging with your office to determine the appropriate Cabinet committee or Cabinet meeting for this proposal to be considered at. Irrespective of the meeting type and date, we recommend that the Order in Council come into force as soon as possible.
17. Accordingly, the attached Cabinet paper seeks a waiver of the 28-day rule for Orders in Council coming into force. If a waiver is not agreed to, R&D businesses affected by the weather events will face uncertainty for a longer period as to 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 will not be able to be processed for a further 28 days.
18. We are also engaging with the Parliamentary Counsel Office to determine if the date of notification of the proposed Order in Council in the New Zealand Gazette can be brought forward. This would enable commencement of the Order to be brought forward as well.

## Financial implications

19. The proposed extension would not have a fiscal impact.
20. 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.

## Administrative implications

21. Inland Revenue will be able to administer the proposed extended RDTI deadlines without requiring any systems changes.

## Consultation

22. The Treasury, the Ministry of Business, Innovation and Employment, and Callaghan Innovation were consulted on this report and the attached Cabinet paper. The Department of the Prime Minister and Cabinet was informed.
23. We have had communications from, and spoken to, some R&D businesses and advisors who are seeking an extension of relevant RDTI filing deadlines in response to the weather events.

## Next steps

24. If authorised, we will issue a drafting instruction to the Parliamentary Counsel Office to draft an Order in Council giving effect to the proposed extension of RDTI deadlines. We will provide this Order to your office in advance of its consideration at the chosen Cabinet committee or Cabinet meeting. Attached to this report are speaking notes to accompany consideration of the Cabinet paper.
25. The attached Cabinet paper should be authorised for lodgement to the Cabinet Office for consideration by either the Cabinet Legislation Committee or by Cabinet. We will be in contact with your office to confirm the meeting type and timing.

26. We will liaise with your office regarding the appropriate timing for communicating the proposed extension to RDTI stakeholders.

**Recommended action**

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We recommend that you:

27. **agree** to recommend an Order in Council that allows for a targeted extension of Research and Development Tax Incentive (RDTI) filing deadlines to 31 March 2023 in response to the January flood events and Cyclone Gabrielle;

Agreed/Not agreed

28. **authorise** Inland Revenue to issue a drafting instruction to the Parliamentary Counsel Office to draft an Order in Council that gives effect to this extension;

Authorised/Not authorised

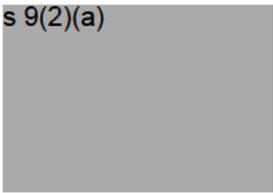
29. **authorise** the lodgement of the attached Cabinet paper to the Cabinet Office;

Authorised/Not authorised

30. **refer** a copy of this report and the attached Cabinet paper to the Minister of Research, Science and Innovation for their information.

Referred/Not referred

s 9(2)(a)



**Chris Gillion**

Policy Lead

Policy and Regulatory Stewardship

**Hon David Parker**

Minister of Revenue

/ /2023



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





# Cabinet

## Minute of Decision

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*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.*

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### Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023

Portfolio                      Revenue

On 20 February 2023, Cabinet:

- 1        **noted** that the Research and Development Tax Incentive (RDTI) has a range of due dates by which businesses must file applications for approval and supplementary returns in order to be eligible for Research and Development (R&D) tax credits;
- 2        **noted** 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        **noted** that the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023 extends the deadlines in paragraph 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        **authorised** the submission to the Executive Council of the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023 [PCO 25305/5.0];
- 5        **noted** 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 **agreed** to waive the 28-day rule so that the regulations can come into force as soon as possible.

Rachel Hayward  
Secretary of the Cabinet