



## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report:** **Tax Administration (February Cyclone Event) Order 2023**

---

<b>Date:</b>	16 February 2023	<b>Priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2023/060

### Action sought

---

	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Approve</b> and <b>lodge</b> the attached paper to Cabinet office	As soon as practical for Cabinet's meeting on 20 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) [Redacted]
Brandon Sloan	Principal Policy Advisor	s 9(2)(a) [Redacted]

16 February 2023

Minister of Revenue

## **Tax Administration (February Cyclone Event) Order 2023**

---

1. This report recommends 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 across the North Island between 12 and 16 February 2023 as a result of Cyclone Gabrielle. The Order would declare the recent cyclone event 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 now 9.21%
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 Gabrielle made landfall in the upper North Island on 12 February 2023. It brought periods of high intensity, and in some places sustained, rain and winds across the North Island, before moving offshore on 16 February 2023.
6. A national state of emergency was declared to support local responses in Northland, Auckland, Bay of Plenty, Gisborne/Tairāwhiti, Hawke's Bay, and Waikato regions, and the Tararua district. The Minister for Rural Communities has also declared a large-scale adverse event for entire North Island. We note, however, that areas such as the Wellington, Wairarapa, Manawatu/Whanganui (apart from Tararua district), and Taranaki regions have been able to weather the cyclone event without significant damage to telecommunications or other essential infrastructure.

### **New Emergency Order required**

7. 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 parts of the North Island, for example, the Orders in Council made in relation to Cyclone Hale on 25 January 2023, and the Auckland Anniversary Floods on 8 February, a new Order in Council is required to take into account the impacts of Cyclone Gabrielle.

### **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 Cyclone Gabrielle. Based on these discussions, we consider that the level of disruption resulting from the Cyclone Gabrielle 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 and weather-related damage,

---

<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 Cyclone Gabrielle between 12 and 16 February 2023.

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

9. There are several key tax payment dates in February. PAYE payments are due by 20 February. GST returns and payments are required by 28 February, as well as a provisional tax payment. 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 Gabrielle. 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 (February Cyclone Event) Order 2023**

11. 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:
  - 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 Gabrielle 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 Auckland, Bay of Plenty, Gisborne, Hawke's Bay, Northland, and Waikato regions, and the Tararua district because of Cyclone Gabrielle, which crossed the North Island of New Zealand starting 12 February and ending 16 February 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 and early 2023.
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 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 20 February 2023. The Order will expire on 30 June 2023. We consider that the Order should apply for at least four months in recognition of the scale of the damage caused by the cyclone, and the cumulative effect that the recent weather events have had on affected areas and taxpayers since Cyclone Hale.

---

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

16. Tax debts that remain unpaid from GST and PAYE obligations would incur interest from 1 July 2023. If the recovery period for affected areas 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**

17. Under existing administrative powers, Inland Revenue is offering relief from late payment and late filing penalties for taxpayers affected by the Cyclone Gabrielle. The income equalisation scheme is also available for primary producer taxpayers as a large-scale adverse event was declared for affected areas. Farmers in those regions with income equalisation accounts who have been affected by Cyclone Gabrielle will be able to make late deposits and/or early withdrawals.
18. Inland Revenue will take a considered, but sympathetic, approach to taxpayers that have been affected by localised flooding and damage from Cyclone Gabrielle but are outside the areas specified in the Order.
19. Some taxpayers may, under the circumstances, have lost some or all of their tax records. Inland Revenue can manage this situation under current law.
20. Changes made in 2021 which give temporary favourable treatment to donated trading stock will also be of assistance to support recovery in affected districts. An extension to this relief to 31 March 2024 is to be considered at Cabinet on 20 February 2023.

### **Other potential tax relief measures sought by stakeholders**

21. As part our discussion with stakeholders about the proposed order, they have identified a range of other tax responses that could assist taxpayers affected by Cyclone Gabrielle. These measures involve changes to current tax policy settings and could have potential fiscal implications, such as, for example providing:
  - 21.1 roll-over relief in the context of insurance payments received for tax depreciated commercial buildings that are damaged or destroyed, and
  - 21.2 temporary tax relief for ex-gratia payments from employers to employees for income tax, and social policy purposes such as Working for Families.
22. We expect that other initiatives will be raised over the coming weeks, such as increasing the threshold for the immediate deductibility of low-value assets, or re-introducing loss-carry back for companies. We will consider these suggested policy responses, and their priority, if the Government advances a medium-term relief response to Cyclone Gabrielle. Key considerations if work is to be progressed on these issues are, the degree to which the tax relief is targeted to the regions in need, and whether the relief is timely and can be funded.
23. We are also reviewing the tax policy responses that were made for the 2010 Canterbury and the 2016 Kaikōura earthquakes. We will provide advice on those measures separately.

### **Administrative implications**

24. Taxpayer contact with Inland Revenue about the effects of the recent weather has been growing strongly following Cyclone Hale, and the Auckland Anniversary Floods. To date, taxpayers are requesting options to either defer tax payments or enter into instalment arrangements.
25. In respect of the current event, we expect that taxpayers will not turn their minds to their tax obligations until after other priority tasks have been attended to. Our media communications are emphasising that taxpayers deal with the clean-up first

and foremost, and to contact Inland Revenue when they are ready. Remission of penalties and interest would apply when tax payments are received.

26. The Order does not have any implications for Inland Revenue's technology systems.

### Revenue implications

27. 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

28. 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.
29. 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

30. If you agree to the recommendations in this report, we recommend you approve and lodge the attached paper to Cabinet as soon as possible for its meeting on 20 February 2023.
31. 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

---

We recommend that you:

- (a) **Approve** and **lodge** the attached paper to Cabinet as soon as possible for its meeting on 20 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