

In Confidence

Office of the Minister of Revenue

Chair, Cabinet

Tax Administration (February Cyclone Event) Order 2023

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Tax Administration (February Cyclone Event) 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 as a result of Cyclone Gabrielle, which crossed the North Island of New Zealand starting 12 February and ending 16 February 2023.

Policy

- 3 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. 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.
- 4 Inland Revenue officials 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, my officials advise that the flooding and weather-related damage caused by Cyclone Gabrielle meet the statutory criteria for interest remission set out in the Tax Administration Act 1994 [paragraph 7 refers]. This is because some taxpayers 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 February. 20 February is a PAYE payment date and 28 February is a payment/filing date for GST, and provisional tax. 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 the Auckland Anniversary Floods on 8 February,¹ a new Order in Council is required to support those taxpayers in regions affected by Cyclone Gabrielle.
- 9 Given the instability and intensity of the weather systems currently affecting New Zealand, I am anticipating that future similar Orders in Council will be needed in response to each new event that affects the country.

Tax Administration (February Cyclone Event) Order 2023

- 10 The flooding and weather-related damage caused by Cyclone Gabrielle 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 Cyclone Gabrielle. 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, Bay of Plenty, Gisborne, and Hawke's Bay regions, as well as the Tararua district between 12 February and 16 February 2023. While other regions in the North Island have been affected, the regions specified above have been the most severely affected with telecommunications and other essential infrastructure being disrupted.

¹ Tax Administration (January Flood Events) Order 2023 SL 2023/3

- 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 June 2023. The Order will apply for a minimum of four months in recognition of the scale of the impact the cyclone has had on the North Island, and the cumulative effects of the recent weather fronts since Cyclone Hale. The Tax Administration Act provides that the duration of the proposed Order can be extended or replaced if, by the beginning of May, a longer period of interest relief is required to support the regions affected by Cyclone Gabrielle.

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 28th 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 Cyclone Gabrielle 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 February Cyclone Event 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 (February Cyclone Event) 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