

Hon David Parker, Minister of Revenue

Information Release

Tax Administration (February Cyclone Event) 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-0043>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2023/060	Tax Policy Report	Tax Administration (February Cyclone Event) Order 2023	16 February 2023
2	CAB-23-SUB-0043	Cabinet Paper	Tax Administration (February Cyclone Event) Order 2023	17 February 2023
3	CAB-23-MIN-0043	Cabinet Minute	Tax Administration (February Cyclone Event) 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 (February Cyclone Event) Order 2023¹

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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¹ <http://www.legislation.govt.nz/regulation/public/2023/0010/11.0/contents.html>



POLICY AND REGULATORY STEWARDSHIP

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

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

Action sought

	Action sought	Deadline
Minister of Revenue	Approve and lodge the attached paper to Cabinet office	As soon as practical for Cabinet's meeting on 20 February 2023

Contact for telephone discussion (if required)

Name	Position	Telephone
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.¹
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,

¹ 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 1994² 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.

² 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

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



Cabinet

Minute of Decision

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.

Tax Administration (February Cyclone Event) Order 2023

Portfolio **Revenue**

On 20 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 February Cyclone Event 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 (February Cyclone Event) Order 2023 [PCO 25317/4.0];
- 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:
 - 5.1 the exercise of the power will only positively affect taxpayers;
 - 5.2 the power it confers will apply to events before the making of the Order;
- 6 **agreed** to waive the 28-day rule so that the regulations can come into force upon their notification in the Gazette.

Rachel Hayward
Secretary of the Cabinet