

In Confidence

Office of the Minister of Revenue
Chair, Cabinet Legislation Committee

TAX ADMINISTRATION (EXTENSION OF DEADLINE FOR RESEARCH AND DEVELOPMENT LOSS TAX CREDIT STATEMENTS) ORDER 2022

Proposal

- 1 This paper seeks the Cabinet Legislation Committee's agreement to submit an Order in Council making the Tax Administration (Extension of Deadline for Research and Development Loss Tax Credit Statements) Order 2022 to the Executive Council.
- 2 This Order would extend the deadline for submitting applications for R&D loss tax credits for the 2021–22 tax year to 30 April 2023.

Relation to Government Priorities

- 3 This Order in Council is recommended to help administer the R&D loss tax credit regime. The Government has a goal of increasing R&D expenditure to two percent of GDP by 2027, and R&D loss tax credits are one way of supporting businesses to increase their R&D expenditure.

Background

- 4 R&D loss tax credits (R&DLTCs) are available to loss-making businesses undertaking R&D. The regime enables businesses to “cash out” their losses to bring forward the tax benefit of those losses. This is beneficial to start-up businesses and businesses engaged in the early phases of R&D, as they may not be able to receive the tax benefit of those losses for several years until they eventually make a profit.
- 5 An R&DLTC statement must be submitted to Inland Revenue in each year that a business wants to cash out its losses. This statement is due on the earlier of:
 - 5.1 The date the taxpayer files their income tax return; and
 - 5.2 The due date for the income tax return.
- 6 This means that if a business files its income tax return at least a day before it files its R&DLTC statement, then it will be denied those R&DLTCs for the year, even if the return and statement were both filed before the due date of the income tax return.

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s 9(2)(f)(iv)



- 8 The changes to primary legislation are expected to be in force from March 2023, so the existing due date settings will apply until then. This means that taxpayers that have inadvertently submitted their R&DLTC statements after filing their income tax returns will experience a delay in being able to cash out their losses until the changes are enacted (likely in March 2023).

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 power would cover extending the deadline for businesses to submit R&DLTC statements.
- 10 I therefore recommend the making of the Tax Administration (Extension of Deadline for Research and Development Loss Tax Credit Statements) Order 2022. This Order in Council would extend the deadline for submitting R&DLTC statements in respect of the 2021–22 tax year to 30 April 2023.
- 11 The proposal would effectively bring forward the R&DLTC eligibility of affected taxpayers from March 2023 to the date that the Order in Council comes into force, if businesses have filed their 2021–22 R&DLTC statement. This is urgent because some R&D businesses file early in order to receive R&DLTCs to finance their ongoing R&D expenditure. Not allowing R&DLTCs to be paid until at least March/April 2023 may have significant cashflow impacts for these businesses.
- 12 Without this Order in Council, businesses will be unable to claim their R&DLTCs until at least March 2023, and potentially not at all if they do not end up filing a statement. Those businesses would be denied R&DLTCs on a procedural matter rather than any substantive policy reason. I consider that this outcome risks undermining the intent of the R&DLTC regime, which is to encourage business R&D expenditure and support the cashflow of loss-making businesses undertaking R&D.
- 13 This issue would not arise in future years, as the Order in Council would provide flexibility for affected taxpayers until the changes to primary legislation are enacted.

Timing and 28-Day Rule

- 14 I propose that the Order in Council giving effect to this extension of the deadline for submitting R&DLTC statements comes into force on 22 December 2022. This would require a waiver of the 28-day rule for regulations coming into force. A waiver is sought on the grounds that it is in the best interests of both taxpayers and the Government.

- 15 Not waiving the 28-day rule would cause frustration for businesses that are seeking R&DLTCs as soon as possible but cannot have their applications approved for a further 28 days, resulting in the delayed receipt of those tax credits. This is particularly harsh when some businesses file early to receive the cash-out as soon as possible. No waiver would also mean that Inland Revenue has to wait an extra 28 days to fully process affected R&DLTC statements, which would increase the processing backlog.

Financial Implications

- 16 The Order in Council does not have any financial implications as it would bring forward the disbursement of R&DLTCs within the same financial year.
- 17 The numbers of businesses that may benefit from this proposal is about 100, based on previous years' data.

Compliance

- 18 The Order in Council complies with:
- 18.1 the principles of the Treaty of Waitangi;
 - 18.2 the rights and freedoms contained in the [New Zealand Bill of Rights Act 1990](#) and the [Human Rights Act 1993](#);
 - 18.3 the principles and guidelines set out in the [Privacy Act 1993](#);
 - 18.4 relevant international standards and obligations;
 - 18.5 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 19 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

- 20 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

- 21 The Treasury's Regulatory Impact Analysis team has determined that the proposal to extend the deadline for R&DLTC statements is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 22 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.

Consultation

- 23 Inland Revenue, the Ministry of Business, Innovation and Employment, Callaghan Innovation, the Treasury, and the Department of the Prime Minister and Cabinet were consulted on this paper.

Communications

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

Proactive Release

- 25 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.

Recommendations

The Minister of Revenue recommends that the Committee:

- 1 **note** that R&D loss tax credits (R&DLTCs) currently require businesses to submit an R&DLTC statement on or before the date that an income tax return is filed for the year;
- 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 (Extension of Deadline for Research and Development Loss Tax Credit Statements) Order 2022 would extend the deadline in recommendation 1 until 30 April 2023 for the 2021–22 tax year;
- 4 **agree** that the Tax Administration (Extension of Deadline for Research and Development Loss Tax Credit Statements) Order 2022 give effect to this extension of the deadline for submitting an R&DLTC statement;

- 5 **note** that a waiver of the 28-day rule is sought:
 - 5.1 so that the Tax Administration (Extension of Deadline for Research and Development Loss Tax Credit Statements) Order 2022 can come into force on 22 December 2022;
 - 5.2 on the grounds that not waiving the rule will:
 - 5.2.1 cause frustration for businesses that are seeking R&DLTCs as soon as possible but cannot have their R&DLTC application approved for a further 28 days, resulting in the delayed receipt of those tax credits; and
 - 5.2.2 increase the processing backlog for Inland Revenue, as Inland Revenue would not be able to fully process affected R&DLTC statements for a further 28 days;
- 6 **agree** to waive the 28-day rule so that the Tax Administration (Extension of Deadline for Research and Development Loss Tax Credit Statements) Order 2022 can come into force on 22 December 2022;
- 7 **authorise** the submission to the Executive Council of the Tax Administration (Extension of Deadline for Research and Development Loss Tax Credit Statements) Order 2022.

Authorised for lodgement

Hon David Parker

Minister of Revenue