

In Confidence

Office of the Minister of Revenue
Chair, Cabinet Legislation Committee

TAX ADMINISTRATION (EXTENSION OF DUE DATES) ORDER 2023

Proposal

- 1 This paper seeks the Cabinet Extreme Weather Recovery Committee's agreement to submit an Order in Council making the Tax Administration (Extension of Due Dates) Order 2023 to the Executive Council.

Background

- 2 Between 8 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. Then, between 12 February and 16 February 2023, Cyclone Gabrielle moved across the North Island, also resulting in heavy rain, high winds, and flooding.
- 3 These severe weather events have impacted upon taxpayer's businesses and livelihoods. Officials have been notified by taxpayer representatives that due to the weather events, some taxpayers will struggle to meet various statutory timeframes. These include:
 - 3.1 Making a payment of income derived by a trustee of a trust in the income year to a beneficiary of the trust in the income year in order for the income to be treated as beneficiary income; and
 - 3.2 Writing off a debt as bad in the income year in order for a deduction to be made available to them in the income year.
- 4 An extension to these statutory timeframes has been requested to support impacted taxpayers. Cabinet has already agreed to other extensions of statutory deadlines via Order in Council in response to the weather events [CAB-23-MIN-0031].

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, whether or not that time has already passed. This would include extending the timeframe for making a payment of income derived by a trustee of a trust in the income year to a beneficiary of the trust, and, writing off a debt as bad in the income year.

- 6 I therefore recommend making the Tax Administration (Extension of Due Dates) Order 2023.
- 7 This Order in Council would extend the time for meeting the statutory requirements for making distributions of beneficiary income and receiving a deduction for a bad debt to 31 May 2023.
- 8 The extension of time would only be made available to taxpayers whose ability to meet the statutory timeframes is significantly adversely affected by any of the severe weather events occurring between January and February of this year.

Timing and 28-Day Rule

- 9 The extension would apply retrospectively to some taxpayers who were unable to meet the relevant statutory timeframes prior to the Order being made. It is therefore desirable to make the Order as soon as possible to provide certainty to taxpayers.
- 10 I propose that the Tax Administration (Extension of Due Dates) Order 2023 come into force as soon as possible. This would require a waiver of the 28-day rule for regulations.
- 11 A waiver is sought on the grounds that it is in the best interests of taxpayers to provide them certainty in an emergency time and the extension is taxpayer friendly.

Financial implications

- 12 The Order in Council does not have any financial implications.
- 13 Baseline forecasts do not factor in the occurrence of weather events nor the consequent charging of penalties that might arise in absence of the proposed extension.

Compliance

- 14 The Order in Council complies with:
- 14.1 the principles of the Treaty of Waitangi;
 - 14.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 14.3 the principles and guidelines set out in the Privacy Act 1993;
 - 14.4 relevant international standards and obligations;
 - 14.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 15 There are no anticipated grounds for the Regulations Review Committee to draw the attached Order in Council to the attention of the House. Although it is likely the Order in Council would have retrospective effect for some taxpayers this is explicitly permitted by the empowering provision.

Certification by Parliamentary Counsel

- 16 The Parliamentary Counsel Office has certified that the attached Order in Council is in order for submission to the Executive Council, provided the 28-day rule is waived.

Impact Analysis

Regulatory Impact Assessment

- 17 The Treasury's Regulatory Impact Analysis team has determined that this proposal to extend the timeframes in relation to two taxpayer obligations under the Income Tax Act 2007 is exempt from the requirement to provide a Regulatory Impact Statement 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

- 18 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

- 19 Inland Revenue will publish an article about these changes in its *Tax Information Bulletin*.

Proactive Release

- 20 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

- 21 The Treasury was consulted on this paper. The Department of the Prime Minister and Cabinet was informed.

Recommendations

The Minister of Revenue recommends that the Committee:

- 1 note that due to the weather events some taxpayers are unable to meet statutory timeframes for making a distribution of beneficiary income and receiving a deduction for a bad debt;
- 2 note that the Tax Administration Act 1994 contains a broader power to extend, by Order in Council, the time provided for doing something under the Act;
- 3 note that the Tax Administration (Extension of Due Dates) Order 2023 would extend the statutory timeframes in recommendation 1 until 31 May 2023 for taxpayers whose ability to meet the timeframes was significantly adversely affected by any of the severe weather events occurring between January and February 2023;
- 4 authorise the submission to the Executive Council of the Tax Administration (Extension of Due Dates) Order 2023;
- 5 note that a waiver of the 28-day rule is sought:
 - 5.1 so that the regulations can come into force as soon as possible;
 - 5.2 on the grounds that it is in the best interests of taxpayers to provide them certainty in a time of disruption;
- 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