



## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report: Supplementary Order Paper: North Island floods**

<b>Date:</b>	1 March 2023	<b>Priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2023/077

### Action sought

	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Agree</b> to recommendations	2 March 2023

### Contact for telephone discussion (if required)

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1 March 2023

Minister of Revenue

## **Supplementary Order Paper: North Island floods**

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### **Summary**

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1. This report seeks your agreement to include legislative amendments in the Taxation (Annual Rates for 2022—23, Platform Economy, and Remedial Matters) Bill (No 2) (“the Bill”) by Supplementary Order Paper (“SOP”). The recommended legislative amendments would provide relief in response to the recent North Island flood events.
2. These amendments provide relief from income tax and fringe benefit tax for cash and benefits provided by employers to employees who have been adversely affected by the North Island flood events, as well as those employees who relocate to the affected areas to assist with the rebuild and recovery.
3. We recommend that the SOP also includes several minor technical amendments to existing measures in the Bill, which are all consistent with the policy intent.
4. We also recommend extending the final date for eligibility for the Cost of Living payment to ensure that individuals do not miss out on the payment because their ability to file their tax return has been impacted by the North Island flooding events.

### **Supplementary Order Paper items that require Cabinet approval**

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5. In response to the recent North Island flooding events, we recommend including legislative amendments in the Bill to provide relief for employees who relocate to the affected areas to assist with the rebuild and recovery, and exemptions from income tax and fringe benefit tax (FBT) for cash and benefits provided by employers to employees who have been adversely affected by the flooding events.
6. The proposed tax relief provisions will apply to a “North Island flood event” which essentially covers the geographical districts and regions that were affected by:
  - 6.1 Cyclone Hale, which crossed the North Island of New Zealand during the period starting on 8 January 2023 and ending on 12 January 2023;
  - 6.2 the heavy rainfall starting on 26 January and ending on 3 February 2023; and
  - 6.3 Cyclone Gabrielle, which crossed the North Island of New Zealand during the period starting on 12 February 2023 and ending on 16 February 2023.

### ***Tax relief for accommodation expenditure for employees working on limited duration projects***

7. To remove some of the adverse impacts of employees relocating to assist in the Christchurch rebuild project, the Government provided tax relief in respect of accommodation provided to employees where their employment duties required them to work on a limited duration project relating to the rebuilding or recovery. This included the repair and reconstruction of land, infrastructure, and other property in greater Christchurch as a result of the Canterbury earthquakes.

8. This extended the standard period that accommodation could be provided to employees who were working on limited duration projects from three years to up to five years depending on when the employee relocated. It was limited to relocations to a workplace in the greater Christchurch region.
9. We consider it appropriate to replicate this provision for the regions affected by the North Island flood events to remove a tax barrier to employers relocating staff to assist in the rebuilding and recovery of those areas.
10. We recommend that the definition of limited duration project be extended for an initial period of five years where the employee relocates to an area affected by a North Island flood event within six months after the first event.
11. However, given the unknown duration that a rebuild programme may take in the affected areas, we also recommend providing for an ability for the Minister of Revenue to extend or modify that period by Order in Council. This will add flexibility to the relief as work commences and more accurate assessments of the duration of the rebuild can be made.

***Tax relief for employers' welfare contributions and accommodation provided to employees***

12. Under existing tax law (with a few limited exclusions), payments made from an employer to an employee are taxable as monetary remuneration.
13. Following the major Christchurch earthquakes in 2010–11, a number of employers made ex-gratia welfare contributions of cash to their earthquake-affected employees. A legislative provision was inserted to provide that income (which could include accommodation benefits) derived by an employee from an employer was exempt income if:
  - 13.1 it was provided by the employer for the purpose of relief of employees from the adverse effects of the Canterbury earthquakes;
  - 13.2 it would have otherwise been taxable income;
  - 13.3 it was derived in the eight weeks after each of the two earthquakes;
  - 13.4 it was not paid in substitution for salary or wages;
  - 13.5 the amount provided did not depend on the seniority of the employee;
  - 13.6 the employee was associated with the employer, then the payment was also available to an unrelated full-time employee; and
  - 13.7 the employer elected to treat the income as being exempt income of the employee.
14. This exemption covered most accommodation benefits and, in relation to each of the two major earthquakes, the first \$3,200 paid to each employee (other than accommodation benefits).<sup>1</sup>
15. We recommend this provision be updated and enacted with reference to the North Island flood events. We recommend the amount of \$3,200 be increased to account for inflation and the scale of the damage in the North Island flood events.
16. Adding pure wage inflation since 2011 would bring the amount to \$4,731 but we recommend rounding this to \$5,000. We also recommend that the time-limited

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<sup>1</sup> This allowed total payments of \$6,400 to be made as there were two events.

application of eight weeks be retained, as this would seem an appropriate period to allow any such payments to be made or benefits to be provided.

### ***Tax relief for certain fringe benefits provided to employees***

17. Fringe benefits provided to an employee are generally subject to FBT. After the Christchurch earthquakes, a number of employers provided benefits to employees or to recovery centres where employees may have received benefits. In response to the Christchurch earthquakes, the Government also introduced an FBT exemption where a benefit was provided to an employee and:
  - 17.1 it was provided by the employer to employees for the purpose of relief of employees from the adverse effects of the Canterbury earthquakes;
  - 17.2 it would have otherwise been a fringe benefit;
  - 17.3 it was received by the employee in the eight weeks after each of the two earthquakes;
  - 17.4 it was not provided in substitution for wages and salary;
  - 17.5 its provision and amount did not depend on the seniority of the employee;
  - 17.6 if the employee was associated with the employer, the benefit was also available to an unrelated full-time employee; and
  - 17.7 the employer elected to treat the benefit as not being a taxable benefit.
18. This exemption covered all “sundry benefits” – for example, benefits that were provided at a drop-in centre. This is because in these cases the employer may not know which employee had received which benefit and thus the employer cannot estimate the value of the benefit.
19. The exemption also covers benefits where the value can be estimated to the extent that the remuneration exemption noted above has not also been paid (i.e., the employer can provide an amount up to \$5,000<sup>2</sup> in cash or in benefits but not both).
20. As employers are likely to provide benefits to their employees affected by the North Island flood events, we recommend that this temporary FBT exemption be replicated with reference to those recent events. We recommend that this relief be subject to similar restrictions to the provision enacted for the Canterbury earthquakes.

### ***Financial implications***

21. There is no fiscal cost to these proposed exemptions. This is because any revenue in the absence of the exemptions would be “windfall” revenue that has not been forecasted. Therefore, the amendments would not affect fiscal baselines.

### ***Administrative implications***

22. These proposals would have no systems or administration costs for Inland Revenue. Inland Revenue would communicate the changes to taxpayers and update staff and online content.

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<sup>2</sup> \$3,200 in respect of the Canterbury earthquakes

## **Supplementary Order Paper items that do not require Cabinet approval**

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### ***Technical amendments to the Bill***

23. We recommend including in the SOP several minor technical amendments to the Bill, such as corrections to commencement dates and cross-references. The amendments relate to the platform economy, cross-border workers, tax debt write-off rules and ring-fenced losses, and the financial arrangements taxation proposals in the Bill, and are all consistent with the policy intent.

### ***Donated trading stock***

24. Recent Orders in Council have provided tax relief for donated trading stock. We recommend including in the SOP a retrospective technical amendment to ensure this relief applies as intended.

### ***Cost of Living payment: amendment to final date to be considered for eligibility (non-legislative change)***

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25. The Cost of Living payment was implemented to cover a particular time period and there is a set timeframe for individuals to have their payment approved. Individuals will not be considered for eligibility if they file their tax return after the final date.
26. The last date for eligibility is currently 31 March 2023. This aligns with the final date for all individual income tax returns to be filed for the 2021–22 tax year.<sup>3</sup>
27. Inland Revenue has decided to defer imposing late filing penalties until 31 May 2023, as part of its North Island flood response. We recommend that the final eligibility date for the Cost of Living payment also be extended to 31 May 2023. This would ensure that individuals intended to be eligible for the payment do not miss out because their ability to file on time has been impacted by the North Island floods.
28. Amending the final date for eligibility for the Cost of Living payment would require Cabinet approval but does not require legislative change. This is because the eligibility criteria for the Cost of Living payment are not set in legislation, but instead were agreed by Cabinet and are published on the Inland Revenue website (CAB-22-MIN-0130 refers). Without the amendment to the criteria, Inland Revenue will not be able to assess eligibility to the Cost of Living payment for anyone who files their tax return after 31 March 2023, regardless of the reason.

### ***Financial implications***

29. Extending the Cost of Living payment eligibility period has no fiscal implications as it relates to a timing change within the same fiscal year. The appropriation is expected to cover all remaining payments.

### ***Administrative implications***

30. Extending the final date would require a moderate level of system change to ensure we can assess eligibility for the Cost of Living payment for returns filed up to 31 May. We would also need to update both internal and external information sources, such as Inland Revenue's website to explain the change. We also expect an increase in contacts from customers and their agents, via both web and phone, as people query their eligibility and the impact of filing after 31 March. These increased contacts are expected to occur from April to August which is our peak busy period when we are finalising income tax assessments for the 2021–22 tax year. This will increase pressure on our frontline staff.

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<sup>3</sup> Eligibility Cost of Living payment is based on an individual's income for the 2021/22 tax year.

## **Consultation**

31. The Treasury were consulted on these proposals.

## **Next steps**

32. The attached Cabinet paper should be lodged with the Cabinet Office as soon as possible in order to be considered by Cabinet on 6 March 2023.
33. The proposed SOP would be released, in consultation with the Leader of the House, prior to the Committee of the whole House stage of the Bill, currently scheduled for 14 March 2023.

## **Recommended action**

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We recommend that you:

### ***Supplementary Order Paper items that require Cabinet approval***

- a) **agree** to extend the time limit for accommodation provided to employees working on limited duration projects (to the extent those projects are related to the rebuild and recovery from a North Island flood event) to five years for employees who relocate within six months after the date of the first event.

Agreed/Not agreed

- b) **agree** to include the ability for the Minister of Revenue to extend or modify the time limit for the limited duration project exemption in respect of a North Island flood event by Order in Council.

Agreed/Not agreed

- c) **agree** to include an exemption from income tax, subject to the same restrictions as the previous exemptions made for the Canterbury earthquakes, for employees for:

- i. all accommodation provided by their employer; and
- ii. amounts paid by their employer that do not exceed \$5,000.

Agreed/Not agreed

- d) **agree** to include an exemption from fringe benefit tax, subject to the same restrictions as the previous exemptions made for the Canterbury earthquakes, for employees for:

- i. all "sundry benefits" provided by their employer; and
- ii. benefits provided by their employer that do not exceed \$5,000 (or such lesser amount considering any cash paid to the employee and subject to the tax exemption in recommendation (c)) and are provided within eight weeks from the day of a North Island flood event.

Agreed/Not agreed

### ***Supplementary Order Paper items that do not require Cabinet approval***

- e) **agree** to include several minor technical amendments to existing measures in the Bill.

Agree/Not agreed

- f) **agree** to include a retrospective technical amendment to ensure that tax relief for donated trading stock applies as intended.

Agreed/Not agreed

### ***Non-legislative change that requires Cabinet approval***

- g) **agree** that the final date to be considered for eligibility for the Cost of Living payment be extended to 31 May 2023.

Agreed/Not agreed

### ***Financial implications***

- h) **note** that recommendations (a) to (h) have no fiscal implications.

Noted

### ***Legislative implications***

- i) **agree** that legislative amendments to give effect to recommendations (a) to (f) should be included in a Supplementary Order Paper to the Taxation (Annual Rates for 2022—23, Platform Economy, and Remedial Matters) Bill (No 2).

Agreed/Not agreed

- j) **note** that the Supplementary Order Paper will be released, in consultation with the Leader of the House, on Tuesday 14 March 2023 prior to the Committee of the whole House stage of the Taxation (Annual Rates for 2022—23, Platform Economy, and Remedial Matters) Bill (No 2).

Noted

### ***Next steps***

- k) **authorise** the lodgement of the attached Cabinet paper with the Cabinet Office as soon as possible for Cabinet to consider at its meeting on 6 March 2023.

Authorised/Not authorised

- l) **refer** a copy of this report to the Minister of Finance and Associate Minister of Revenue for their information.

Referred/Not referred

s 9(2)(a)

**Peter Frawley**

Policy Lead

Policy and Regulatory Stewardship

**Hon David Parker**

Minister of Revenue

/ /2023