

In Confidence

Office of the Minister of Revenue

Chair, Cabinet

NORTH ISLAND FLOODS SUPPLEMENTARY ORDER PAPER – APPROVAL FOR RELEASE

Proposal

- 1 This paper seeks Cabinet's approval to policy proposals that would provide temporary tax relief in response to the recent North Island flood events. It also seeks approval to delegate authority to the Minister of Revenue to release a Supplementary Order Paper (SOP) to the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) ("the Bill") to give effect to the proposals. The SOP also includes several minor technical amendments to existing measures in the Bill, which are all consistent with the policy intent.
- 2 Cabinet approval is also sought to extend the eligibility of the Cost of Living payment. The proposed extension would align with Inland Revenue's decision to defer imposing late filing penalties until 31 May 2023, as part of its North Island floods response. 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. This would not require a legislative change.

Relation to Government Priorities

- 3 The proposals in this paper are focused on keeping communities safe following recent weather events in the North Island and the cost of living.
- 4 I propose providing limited tax relief for accommodation for employees working on limited duration projects assisting with the rebuild and recovery of areas affected by the North Island flooding events. I also propose introducing limited tax relief measures will remove tax barriers for employers seeking to provide a range of welfare benefits to their employees to help them cope with the recent weather.

- 5 Budget 2022 included a Cost of Living payment to help New Zealanders with the rising costs of inflation. The payment is administered by Inland Revenue and is based on individuals that earned \$70,000 or less in the 2021–22 tax year. The last date for eligibility for the payment is currently 31 March 2023 (being the last date for tax returns to be filed for that tax year). I propose extending the final eligibility date until 31 May 2023 to ensure that individuals do not miss out on the Cost of Living payment because their ability to file their tax return has been impacted by the North Island flooding events.

Executive summary

- 6 To support the recovery of the North Island from recent weather events, I propose providing tax relief for accommodation expenditure for employees working on limited duration projects relating to rebuilding or recovery of affected areas. The proposal would extend the standard period that accommodation can be provided to employees who are working on limited duration projects from three years up to five years.
- 7 Under existing law, payments made from an employer to an employee and fringe benefits provided to an employee are generally taxable, either as monetary remuneration or by way of fringe benefit tax (FBT). I propose providing limited tax exemptions for employers and their employees for employer welfare contributions related to the recent North Island flooding events. This will support employees who have been adversely affected by the flooding events.
- 8 I recommend that the above tax relief measures be included in a SOP to the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) . The SOP also includes several minor technical amendments to existing measures in the Bill, which are all consistent with the policy intent. The Bill has a category 1 priority on the 2023 Legislation Programme (must be enacted before the general election as a matter of law), and is expected to be enacted before the end of March 2023.
- 9 The last date for filing tax returns for the 2021–22 tax year is 31 March 2023. Inland Revenue has exercised its operational discretion to defer imposing penalties on taxpayers who file late tax returns until 31 May 2023, as part of its North Island floods response. The eligibility for the Cost of Living payment is linked to income tax returns filed for the 2021–22 tax year. I recommend that the final eligibility date for the Cost of Living payment is also 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.

Background

- 10 In response to the Christchurch earthquakes in 2010–11, limited tax relief was provided for accommodation of employees relocated to work on limited duration projects assisting with rebuilding and recovery of affected areas, and welfare payments and benefits provided by employers to employees affected by the earthquakes.

- 11 The proposed amendments for inclusion in an SOP would mirror some of the tax relief measures provided in response to the Christchurch earthquakes. These measures would 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.
- 12 Inland Revenue officials are developing advice on other tax relief measures that could be introduced in response to the recent North Island flood events. These potential measures are expected to mainly relate to assets that have been damaged or destroyed (plant, equipment, buildings, and other land improvements). This advice will consider the nature and extent of the damage caused by the recent weather events and stakeholders' perspectives and concerns. This advice is less urgent because taxpayers using tax agents have about 12 months before they need to file a tax position in relation to damaged or destroyed assets (31 March 2024 for the 2022–23 tax year).

Supplementary Order Paper

- 13 The proposed SOP will include limited tax measures to provide relief in response to the recent North Island flood events and minor technical amendments to the Bill. The SOP is necessary as amendments to existing legislation are required to implement the proposed policy changes in a timely manner.
- 14 I recommend that the proposed tax relief provisions relating to accommodation and employer's welfare contributions apply to a "North Island flood event", which would be defined as the geographical districts and regions that were affected by:
 - 14.1 Cyclone Hale, which crossed the North Island of New Zealand during the period starting on 8 January 2023 and ending on 12 January 2023;
 - 14.2 the heavy rainfall starting on 26 January and ending on 3 February 2023; and
 - 14.3 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

- 15 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.

- 16 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.
- 17 I 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.
- 18 Given the unknown duration that a rebuild programme may take in the affect areas, I also recommend introducing an ability for the Minister of Revenue to extend or modify that period by Order in Council. This will provide flexibility to the proposed 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

- 19 Under existing law (with a few limited exceptions), payments made from an employer to an employee are taxable as monetary remuneration. 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:
 - 19.1 it was provided by the employer for the purpose of relief of employees from the adverse effects of the Canterbury earthquakes;
 - 19.2 it would have otherwise been taxable income;
 - 19.3 it was derived in the eight weeks after each of the two earthquakes;
 - 19.4 it was not paid in substitution for wages or salary;
 - 19.5 the amount provided did not depend on the seniority of the employer;
 - 19.6 the employee was associated with the employer, then it was also available to an unrelated full-time employee; and
 - 19.7 the employer elected to treat the income as being exempt income of the employee.
- 20 The exemption covered most accommodation benefits and in, in relation to each of the two major earthquakes, the first \$3,200 paid to each employee other than accommodation benefits.
- 21 I recommend introducing a provision along the same criteria with reference to the North Island flood events. I also recommend that the amount of \$3,200 be increased to \$5,000 to account for inflation and the scale of the damage from the recent flooding events. This will help employers support their employees that have been affected by the recent weather events.

Tax relief for certain fringe benefits provided to employees

- 22 Fringe benefits provided to an employee are generally taxable by way of FBT. After the Christchurch earthquakes, a number of employers provided benefits to employees or to recovery centres where employees may have received benefits. The Government provided an exemption from FBT where a benefit was provided to an employee and:
- 22.1 it was provided by the employer to employees for the purpose of relief of employees from the adverse effects of the Canterbury earthquakes;
 - 22.2 it would have otherwise been a fringe benefit;
 - 22.3 it was received by the employee in the eight weeks after each of the two earthquakes;
 - 22.4 it was not provided in substitution for wages and salary;
 - 22.5 its provision and amount did not depend on the seniority of the employee;
 - 22.6 if the employee was associated with the employer, then it was also available to an unrelated full-time employee; and
 - 22.7 the employer elected to treat the benefit as not being a taxable benefit.
- 23 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 what benefits and thus the employer cannot estimate the value of the benefit.
- 24 I recommend introducing a similar temporary relief provision with reference to the North Island flood events. The exemption would also cover benefits where the value can be estimated to the extent that the remuneration exemption noted above has not also been paid (i.e., and employer can provide an amount up to \$5,000 in cash or in benefits but not both).

Cost of Living payment eligibility

- 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 to the final date for all individual income tax returns to be filed for the 2021–22 tax year.
- 27 Inland Revenue has exercised its operational discretion to defer imposing late filing penalties until 31 May 2023, as part of its North Island flood response. I recommend that Cabinet also extend the final eligibility date for the Cost of Living payment 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 Without amending the criteria, Inland Revenue would 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 There are no fiscal implications of the proposed tax relief measures as tax revenue in the absence of the proposed exemptions would be “windfall” gains in tax revenue that have not been forecasted.
- 30 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

- 31 The proposed limited tax relief measures will have no systems implications for Inland Revenue, and other administrative implications (such as guidance) will fall within Inland Revenue’s existing change capacity.
- 32 The change to the Cost of Living payment eligibility will require a moderate level of system change to ensure Inland Revenue can assess eligibility for the Cost of Living payment for tax returns filed up to 31 May 2023. Inland Revenue will update both internal and external information sources, such as Inland Revenue’s website to explain the change. Inland Revenue expects an increased level of contacts from taxpayers and their agents, via both web and phone, as people query their eligibility and the impact of filing after 31 March 2023. These increased contacts are expected to occur from April to August which is Inland Revenue’s peak busy period when income tax assessments for the 2021–22 tax year are finalised. This will increase pressure on Inland Revenue’s frontline staff.

Legislative implications

- 33 Implementing the proposed tax relief measures will require changes to the Income Tax Act 2007. I propose to include the necessary legislative changes in a SOP to the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) prior to the Committee of the whole House stage.
- 34 The Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) holds a category 1 priority on the 2023 Legislation Programme (must be enacted before the general election as a matter of law) and is expected to be enacted by the end of March 2023.
- 35 The change to the Cost of Living payment eligibility period does not require a legislative amendment. The Cost of Living payment criteria was not set in legislation, but was agreed to by Cabinet and published on Inland Revenue’s website [CAB-22-MIN-0130 refers].

Impact Analysis

Regulatory Impact Assessment

- 36 The Treasury's Regulatory Impact Analysis team has determined that the proposed tax relief in response to Cyclone Gabrielle and the Auckland Anniversary flooding is exempt from the requirement to provide a Regulatory Impact Statement. This is granted on the grounds that the proposals are intended to manage the direct actions taken to protect the public in response to a declared emergency event and required urgently to be effective (making a complete, robust and timely Regulatory Impact Statement unfeasible).
- 37 The Treasury's Regulatory Impact Analysis team has determined that the proposed extension of the eligibility date for Cost of Living payments is exempt from the requirement to provide a Regulatory Impact Statement, as 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

- 38 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

Population

- 39 Due to the urgency of the response to the recent weather events, Inland Revenue officials have been unable to determine how many taxpayers would be impacted by the proposed limited tax relief measures.
- 40 As of 26 February 2023, Inland Revenue estimated that a further 290,000 individual income tax returns are due to be filed for the 2021–22 tax year. Officials estimate that about 50 percent of these individuals may be eligible for the Cost of Living payment based on their income. It is unclear how many of these returns will be filed during the proposed extended eligibility period.

Human Rights

- 41 The proposals comply with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

Relevant Government Departments or Other Public Bodies

- 42 Inland Revenue consulted the Treasury and informed the Department of the Prime Minister and Cabinet of the proposals.

Relevant Private Sector Organisations and Public Consultation Processes

- 43 Inland Revenue officials have sought input from key stakeholders on potential tax relief measures in response to the North Island flooding events.

- 44 No public consultation has been undertaken on the proposal to extend the Cost of Living Payment eligibility criteria.

Communications

- 45 I will work with Inland Revenue on communicating the proposed changes to taxpayers.
- 46 Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Bill is enacted.

Proactive Release

- 47 I propose to proactively release this Cabinet paper and associated Cabinet minute in full shortly after the proposed release of the SOP.

Recommendations

The Minister of Revenue recommends that Cabinet:

- 1 **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.
- 2 **agree** to include the ability for the Minister of Revenue to extend or modify the time limit for the limited duration project exemption (outlined in recommendation 1) in respect of a North Island flood event by Order in Council.
- 3 **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:
 - 3.1 accommodation provided by their employer; and
 - 3.2 amounts paid by their employer that do not exceed \$5,000.
- 4 **agree** to include an exemption from fringe benefit tax (FBT), subject to the same restrictions as the previous exemptions made for the Canterbury earthquakes, for employees for:
 - 4.1 all sundry benefits provided by their employer; and
 - 4.2 benefits provided by their employer that do not exceed \$5,000 (or such less amount taking into account any cash paid to the employee and subject to the tax exemption in recommendation 3).
- 5 **agree** that the final date to be considered for eligibility for the Cost of Living payment be extended to 31 May 2023.

Financial implications

6 **note** that recommendations 1 to 5 have no fiscal implications.

Legislative implications

7 **agree** to authorise the Minister of Revenue, in consultation with the Leader of the House, to release a Supplementary Order Paper to the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) prior to its Committee of the whole House stage, containing the measures in recommendations 1 to 4.

Authorised for lodgement

Hon David Parker

Minister of Revenue