

Sensitive

Office of the Minister of Finance

Office of the Minister of Revenue

Chair, Ad Hoc Cabinet Committee on COVID-19

COVID-19: TAX MEASURES

Proposal

1. This paper seeks the Ad Hoc Cabinet Committee on COVID-19's (the Committee) agreement to two tax measures in response to the COVID-19 outbreak:
 - 1.1 Give the Commissioner of Inland Revenue the discretion to remit use of money interest (UOMI) for taxpayers that have had their ability to pay tax on time significantly adversely affected by the COVID-19 outbreak; and
 - 1.2 Allow Inland Revenue to share information with Government departments, New Zealand Police, ACC and Kāinga Ora, in order to assist these agencies in relation to the COVID-19 outbreak.
2. If the proposals in this paper are approved, we propose including the necessary legislative amendments in a Bill to be introduced as soon as practicable.
3. These measures are directed at facilitating business continuity for affected businesses and complement wider government work in response to the COVID-19 outbreak.

Current economic context

4. The measures in this paper reflect early tax interventions to support business continuity given the current view on the overall economic position we are facing. As such, they are fairly targeted.
5. As the immediate and developing economic disruption caused by COVID-19 changes and a greater proportion of businesses are negatively impacted by COVID-19, there are other business tax measures that are less targeted and more stimulatory that may become desirable (for example, a cut to the UOMI rate). Officials continue to monitor the situation and advise on these measures.

Use of money interest (UOMI) remission

Purpose

6. We are proposing a change to the rules for when interest payable on underpayments of tax can be remitted. The proposal would allow Inland Revenue to ensure an

effective zero-rate of interest on tax debt owed by taxpayers severely affected by the economic shock caused by the COVID-19 outbreak.

Background

7. The purpose of use of money interest (UOMI) is to compensate the Government for the loss of use of money from taxpayers underpaying their tax.
8. It applies to all tax types administered by Inland Revenue, including income tax and GST. UOMI also applies to underpayments of tax that are withheld at source, such as PAYE and RWT. UOMI also applies to Working for Families debt.
9. There are some legislative mechanisms that allow UOMI to be remitted however, these are not fit for purpose to respond to the nature of the economic shock caused by COVID-19.
10. For the remission of interest in response to emergency events, the current rules provide for an Order in Council process to allow Inland Revenue to remit UOMI where a taxpayer is “physically prevented” from making a payment and are directed at situations or events where public safety is of paramount concern because of the risk of injury or death, typically due to a natural disaster.
11. In our view, the current statutory framework is not appropriate to address circumstances where a taxpayer is financially unable to pay their tax on time because of the economic impacts of the COVID-19 outbreak.

Proposal

12. We recommend that the Commissioner of Inland Revenue (Inland Revenue) be given the discretion to remit UOMI if a taxpayer’s ability to make a tax payment on time has been significantly adversely affected by the COVID-19 outbreak. The discretion would apply both when a taxpayer is physically unable to make a tax payment on time and when a taxpayer is financially unable to make a tax payment on time because of the economic nature of the event.
13. While the discretion would enable Inland Revenue to remit UOMI on a late tax payment, the taxpayer would still be required to pay their core tax debt.
14. For Inland Revenue to exercise this discretion, it must be satisfied that the taxpayer’s ability to make a tax payment on time has been significantly adversely affected by the COVID-19 outbreak. A taxpayer’s business being seriously affected by COVID-19 would not be sufficient grounds for UOMI to be remitted if they still had the ability to make a tax payment on time. As such, UOMI is less likely to be remitted for a large business that has been adversely affected by COVID-19 than a small-medium business as the large business is more likely to have financial capability and cash reserves to make a tax payment by its due date.
15. Inland Revenue is currently developing guidelines for the UOMI remission eligibility criteria. The eligibility criteria for interest remission would be aligned where possible with the eligibility criteria for the wage subsidy scheme. In particular, taxpayers eligible to receive the wage subsidy payment would be considered to have satisfied Inland Revenue’s criteria for UOMI remission.

Application date

16. We recommend that the proposed discretion for the Commissioner of Inland Revenue to remit UOMI in response to the COVID-19 outbreak apply only for tax payments due on or after 14 February 2020. This is the date that Inland Revenue announced that tax relief and income assistance measures would be available to people affected by a downturn in business owing to the COVID-19 outbreak.
17. The proposed discretion would only apply for two years from the date of enactment unless extended by an Order in Council. This would ensure that the discretion to remit UOMI is targeted at taxpayers affected by the current COVID-19 outbreak.

Information sharing

Purpose

18. We propose an amendment to the rules governing Inland Revenue's ability to share information with other government departments. This would ensure information can be supplied to assist the efficient and effective delivery of the Government's COVID-19 response.

Background

19. Currently, tax legislation requires Inland Revenue staff to keep taxpayer information confidential unless a specific legislative exception authorises the disclosure. There are a number of exceptions in the tax legislation enabling Inland Revenue to share information with other agencies. These existing exceptions will be used, where possible, to share information with other agencies to assist in the response to the COVID-19 outbreak.
20. However, there may be situations where, as a result of the COVID-19 outbreak, it is desirable for Inland Revenue to share information with other agencies with which Inland Revenue does not have any existing arrangements or where the existing arrangements are not flexible enough to allow the required sharing to occur.

Proposal

21. We recommend legislative amendments to allow Inland Revenue to share information with other agencies in order to respond to the COVID-19 outbreak. This provision will be targeted, time limited, and only used when existing legislative provisions are not adequate to share information.
22. A similar provision allowed Inland Revenue to share information as part of the response to the Canterbury earthquake and this proposal is modelled on that provision.
23. The proposed provision would allow Inland Revenue to share information with Government departments, the New Zealand Police, ACC, and Kāinga Ora, to help those agencies provide assistance in relation to the COVID-19 outbreak. For example, Inland Revenue could provide employee information to assist auditing of job subsidy claims to counter fraud. The ability for Inland Revenue to share information is often an important factor to the success of programmes, including

mitigating fraud risk, that provide temporary income relief which have either been in response to a very large negative economic shock (ReStart – GFC) or tightly time-limited in response to a highly-localised and short-lived event (Earthquake Job Loss Cover – February 2011 Christchurch aftershock). The information that could be shared under the power would relate to both individuals and non-individuals and may include, but is not limited to, identifying information, contact and location information, financial information, and family information.

24. The proposed provision would apply for a period of two years only unless extended by an Order in Council. This would allow the Government to continue sharing information, if required, in response to COVID-19 after the two-year period.
25. Currently, tax legislation requires those persons who have access to taxpayer information under an information sharing provision to keep that information confidential and not disclose or use it for a purpose other than that for which it was provided. We recommend that this requirement should also apply to the proposed information sharing provision to assist the response to the COVID 19 outbreak.
26. As a safeguard, Inland Revenue will retain a discretion to refuse to disclose information if Inland Revenue considers it is undesirable to do so.
27. This provision would be limited to information sharing only and would not extend Inland Revenue's information gathering powers

Application date

28. This provision would apply from the date of enactment of the Bill.

Other tax measures

29. Inland Revenue and the Treasury are continuing to work on a range of other tax measures to support business continuity. Approval for these measures will be sought over the next few weeks and are likely to include approving regulations to clarify the GST treatment of the work-subsidy payments and other tax relief measures that will require legislative change.

Consultation

30. Owing to the short timeframes for developing a policy response to the COVID-19 outbreak, there has been no public consultation on the proposal to give the Commissioner of Inland Revenue the discretion to remit UOMI.
31. The Office of the Privacy Commissioner has been informed of the information sharing proposal. However, due to the short timeframes for developing a policy response to the COVID-19 outbreak, the Commissioner has not been consulted on the proposal.

Financial implications

UOMI remission

32. There is no direct fiscal cost from the proposal to give the Commissioner of Inland Revenue discretion to remit UOMI in response to the COVID-19 outbreak. There would be a negative financial implication for the Crown as this policy change would result in foregone UOMI revenue. However, as the Government's fiscal forecasts do not currently include COVID-19-related interest charges, their remission will have no impact on the fiscal position.
33. There are, however, a number of risks associated with this proposal:
 - 33.1 Decreasing the incentive to pay tax when it falls due (in smaller instalments) could result in some taxpayers being unable to pay their larger tax bill at a later date, which could result in core tax not being recoverable; and
 - 33.2 Taxpayers who would have been subject to UOMI penalties under ordinary economic circumstances could also face COVID 19-related stress. Remitting UOMI penalties for these taxpayers would have a fiscal cost (albeit unquantifiable), as some share of the remitted interest would have related to non-COVID-19 drivers.
34. More broadly, there is a risk that remitting UOMI could lead to the deliberate underpayment of tax in situations where the tax would have ordinarily been paid in full and on time, with delays potentially crossing fiscal years.
35. These risks will impact on the fiscal position if they materialise. We are unable to quantify the materiality of the potential impacts.

Information sharing

36. There are no financial implications relating to the sharing of information proposal.

Administration impacts

37. Inland Revenue has not yet completed a full impact assessment of these proposals and will need to do this, including identifying any resourcing implications, once details of eligibility criteria are more developed.
38. The changes proposed to UOMI will generate additional contacts of a complex nature for Inland Revenue as people seek advice on how these changes impact their situation. The retrospective nature of the changes adds to the complexity. Inland Revenue is already under pressure to manage customer demand from the upcoming Business Transformation Release 4 changes, and the beginning of the 2020 auto-calculation period. There are additional expected cumulative impacts which Inland Revenue also need to manage, including from Budget 2020 items, further COVID-19 responses and the impact of reduced baselines due to the reduction of time-limited funding.
39. To manage this additional demand Inland Revenue will need to factor this into managing this peak season and given the likely resource contentions, re-

prioritisation decisions would need to be made. The impact of not having sufficient capacity and capability is likely to be a sub-optimal customer experience and will potentially impact on performance standards.

40. These changes will require community and stakeholder engagement. This includes the UOMI remission facility for affected taxpayers which will require communication of the eligibility criteria. Inland Revenue intends to publish guidance to assist taxpayers in deciding whether they should seek this sort of relief.
41. Although some of the measures described in this paper are intended to be targeted at taxpayers that are significantly financially affected by the economic impact of COVID-19, there will be some applications for relief from taxpayers who have not been adversely affected. Inland Revenue staff will need to assess risk when actioning these requests and in doing so will be supported by our new systems which will help identify cases needing closer inspection.

Legislative implications

42. Implementing the proposals recommend in this paper requires changes to the Tax Administration Act 1994.
43. If approved, we propose that the legislative changes resulting from these recommendations be included in a Bill to be introduced as soon as practicable.
44. To ensure a Bill can be introduced as soon as practicable, we recommend that the Committee delegate authority to the Minister of Revenue, in consultation with the Minister of Finance and the Leader of the House, to introduce a Bill. This would mean the Cabinet Legislation Committee would not consider the Bill prior to its introduction.

Impact analysis

Regulatory Impact Assessment

45. Cabinet's impact analysis requirements apply to the proposals included in this paper. The proposal to allow Inland Revenue to remit UOMI would amend interest levels for unpaid taxation for 2-years. No impact analysis has been provided for this proposal due to the short time frame imposed by the response to COVID-19. While understandable under the circumstances, the proposal creates potential for significant and unintended impacts throughout its 2-year duration. The Treasury therefore considers a regulatory impact analysis is required and this can be achieved via a Supplementary Analysis Report (SAR). The Treasury will work with the responsible Minister and his officials on the nature and timing of the SAR.

Climate Implications of Policy Assessment

46. The Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Human rights

47. The proposals in this paper do not impinge on rights and freedoms under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Gender implications

48. There are no gender implications arising from these proposals.

Disability perspective

49. No disability issues arise from these proposals.

Publicity

50. A media statement on the proposals included in this paper will be released following the Committee's meeting on Wednesday 18 March. A commentary on the Bill containing these proposals will also be released when the Bill is introduced. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Bill is enacted.

Proactive release

51. We propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions when the Bill is introduced in late March 2020.

Recommendations

The Minister of Finance and the Minister of Revenue recommend that the Ad Hoc Cabinet Committee on COVID-19:

Use of money interest remission

1. **Agree** that the Commissioner of Inland Revenue be given the discretion to remit use of money interest for taxpayers that have had their ability to pay tax on time significantly adversely affected by the COVID-19 outbreak;
2. **Agree** that the Commissioner of Inland Revenue's discretion to remit use of money interest in response to the COVID-19 outbreak would apply only to tax payments due on or after 14 February 2020;
3. **Agree** that the Commissioner of Inland Revenue's discretion to remit use of money interest in response to the COVID-19 outbreak would apply for a period of 2-years only unless extended by an Order in Council;
4. **Note** that giving the Commissioner of Inland Revenue the discretion to remit use of money interest in response to the COVID-19 outbreak would not have any fiscal cost;

Information sharing

5. **Agree** that the tax legislation be amended to allow Inland Revenue to share information, with Government departments, New Zealand Police, ACC and Kāinga Ora, in order to assist these agencies in relation to the COVID-19 outbreak;
6. **Agree** that this information sharing provision apply from the date of enactment for a period of 2-years only unless extended by an Order in Council;
7. **Agree** that the same confidentiality requirements on officers or employees who currently receive taxpayer information from Inland Revenue would also apply to officers or employees of Government agencies who receive information under recommendation (5) above.
8. **Note** that Inland Revenue will retain a discretion to refuse to disclose information if Inland Revenue considers it is undesirable to do so.

Legislative vehicle

9. **Agree** that the legislative amendments to the Tax Administration Act 1994 required to give effect to the proposals recommended in this paper be included in a Bill to be introduced as soon as practicable;
10. **Invite** the Minister of Revenue to instruct Inland Revenue to draft the necessary amendments to give effect to the proposals recommended in this paper;
11. **Agree** to delegate authority to the Minister of Revenue to make decisions on the detailed design of the proposals recommended in this paper and, in consultation with the Minister of Finance and the Leader of the House, to introduce a Bill containing these proposals as soon as practicable.

Authorised for lodgement

Hon Grant Robertson
Minister of Finance

Hon Stuart Nash
Minister of Revenue