Inland Revenue
Te Tari Taake

POLICY AND STRATEGY

TE TAI ŌHANGA
THE TREASURY

Tax policy report: **Draft Cabinet paper: COVID-19: Tax measures to support affected businesses**

Date:	11 March 2020	**Priority:**	High
Security level:	Sensitive - Budget	**Report number:**	IR2020/139 T2020/616

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations **Note** the fiscal impacts	12 March 2020
Minister of Revenue	**Agree** to recommendations **Note** the fiscal impacts	12 March 2020

Contact for telephone discussion (if required)

Name	Position	Telephone
s9(2)(a) [redacted]	Policy Lead	s9(2)(a) [redacted]
	Principal Policy Advisor	
	Acting Team Leader	

11 March 2020

Minister of Finance
Minister of Revenue

Draft Cabinet paper: COVID-19: Tax measures

Introduction

1. This report sets out tax measures that can be implemented as part of the Government's response to the economic impact of COVID-19. Officials seek your agreement to implement these proposals. Attached is a draft paper for your review that seeks the agreement of the Ad Hoc Cabinet Committee on COVID-19 (CVD) to the measures.

2. The measures include the following:

   2.1 Remission of use of money interest (UOMI); and

   2.2 Expanding Inland Revenue's information sharing powers to support the response to COVID-19.

3. In addition to the above, officials will provide advice on potential changes to provisional tax in a separate report. These measures include:

   3.1 Increasing the provisional tax threshold (bringing forward existing Budget 2020 initiative);

   3.2 Removing the requirement to make payments to fall within the safe harbour rule; and

   3.3 Increasing the income threshold to use the accounting income method (AIM).

4. At this stage we do not recommend significantly reducing the rate of UOMI as a response to COVID-19. This is because it will benefit taxpayers that are not adversely affected. Lowering the rate will also create a disincentive to pay tax. These outcomes are counter to our current framework that unaffected taxpayers should continue to pay their tax. If the immediate and developing economic disruption caused by COVID-19 changes and a greater proportion of businesses are negatively impacted by COVID-19, there may be a case for revisiting the overall rate of UOMI.

5. We expect that a UOMI rate reduction will be triggered under the normal regulatory process next month. This would mean that the rates of UOMI could be lowered through the normal regulatory process without requiring any legislative changes.

6. Officials will provide you with a finalised Cabinet paper on Thursday 12 March based on the recommendations you agree to in this report and following any other comments you wish to make on the draft Cabinet paper.

Context

7. The measures outlined in this report are all intended to address microeconomic problems on a targeted basis, such as a business that needs relief due to the economic impact of COVID-19. Hence, options like UOMI remission are intended to deal with taxpayers on a case-by-case basis rather than have broad application.

8. This report does not consider how tax responses should address COVID-19 at a macroeconomic level. However, officials will provide advice on potential macroeconomic tax measures shortly.

Remission of UOMI

Background

9. The purpose of use of money interest (UOMI) is to compensate the Government for the time value of money lost due to taxpayers underpaying their tax.

10. 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.

11. Under the current rules in the Tax Administration Act 1994, remission of UOMI can occur when an emergency event[1] physically prevents a taxpayer from paying their tax. For example, an Order in Council was used to this effect for the Hawke's Bay gastroenteritis outbreak in 2016 (IR2020/134 refers).

12. We consider that the current empowering provision for remitting interest on underpaid tax is not fit for purpose to address circumstances where a taxpayer is financially unable to pay their tax on time because of the economic impacts of COVID-19.

Proposal

13. Officials recommend that a UOMI remission measure specific to COVID-19 is legislated. This would give the Commissioner of Inland Revenue 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 financially unable to make a tax payment on time because of the economic nature of the event as well as when they are physically unable to make a tax payment on time.

14. Officials support this option as it fits within our current framework for evaluating tax policy responses to the economic impact of COVID-19; it does not incentivise unaffected taxpayers to stop paying their taxes, and it supports affected taxpayers to pay their tax when they are able to. It is a much more targeted measure than a general reduction in the rate of UOMI (discussed later).

15. For the Commissioner of Inland Revenue to exercise this discretion, she 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 significantly 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.

16. 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 that was announced on 9 March. In particular, taxpayers eligible to receive the wage subsidy payment would be considered to have satisfied Inland Revenue's criteria for UOMI remission.

[1] As defined in section 4 of the Civil Defence Emergency Management Act 2002.

17. UOMI remission will 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.

18. 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.

Provisions for information sharing

Background

19. The current rules require Inland Revenue 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, the Government may require 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 enable the required sharing to occur.

Proposal

21. Officials 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 enabled Inland Revenue to share information as part of the response to the Canterbury earthquake and this proposal is modelled on that earlier provision.

23. The proposal would enable Inland Revenue to share information with Government departments and the New Zealand Police, ACC, and Kāinga Ora, to help those agencies provide assistance in relation to the COVID-19 outbreak.

24. The information 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. The purpose of the amendment is to facilitate the efficient flow of information to ensure that the government's wider programmes responding to the economic shock caused by the COVID-19 outbreak are effective and correctly targeted.

25. The provision would apply for a period of two years only unless extended by an Order in Council. This would enable the Government to continue sharing information, if required, in response to COVID-19 after the two-year period.

26. 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 it or use it for a purpose other than that for which it was provided. This requirement will also apply to the proposed information sharing provision to assist in the response to the COVID-19 outbreak.

27. This provision would be limited to information sharing only and would not extend Inland Revenue's information gathering powers. The provision would apply from the date of assent of the bill that it is included in.

Other measures: provisional tax

28. You have requested that officials look at other tax measures relating to provisional tax that could be made to assist businesses in dealing with the economic impacts of COVID-19.

29. These tax measures are not included in the draft Cabinet paper. Officials are preparing a further report on these measures. The current recommendations for that report include:

    29.1 Increasing the provisional tax threshold from $2,500 to $5,000;

    29.2 Removing the requirement for a taxpayer to make payments to fall within the provisional tax safe harbour rule; and

    29.3 Increasing the income threshold to use AIM from $5 million to $10 million.

30. Although these measures are being considered in a separate report, they could be included in the same bill as the UOMI remission and information sharing provisions if Ministers agree to them.

Reducing the rate of UOMI

Directly reducing the rate of UOMI

31. At this stage we do not recommend significantly reducing the rate of UOMI as a response to COVID-19. This is because it will benefit taxpayers that are not adversely affected. Lowering the rate will also create a disincentive to pay tax. These outcomes are counter to our current framework that unaffected taxpayers should continue to pay their tax.

32. With a lower rate of UOMI, taxpayers are incentivised to pay other debt ahead of their tax or stop paying their tax altogether. There are operational measures that Inland Revenue could undertake to mitigate this impact, but officials consider that the resources required to do this could be better deployed assisting affected businesses.

33. The role of tax pooling companies also needs to be taken into account when considering a reduction in the rate of UOMI. These companies provide an important service to taxpayers.

34. In terms of measures relating to UOMI, officials consider that targeted remission is a better policy response. It would ensure that unaffected taxpayers are not encouraged to stop paying their tax, but it would assist eligible taxpayers that are financially affected by the economic impact of COVID-19.

35. If the immediate and developing economic disruption caused by COVID-19 changes, and a greater proportion of businesses are negatively impacted by COVID-19, there may be a case for revisiting the overall rate of UOMI.

Reviewing the UOMI rate-setting formulas

36. The formulas for calculating the UOMI rate for under- and over-payments of tax track the Reserve Bank of New Zealand (RBNZ) floating first mortgage new

customer housing rate series and the RBNZ 90 days bank bill rate series, respectively.

37. These formulas should be reviewed as a long-term project on the Government's tax policy work programme. We do not recommend a formula change now as the policy implications of doing so have not yet been properly considered.

A change in the rate of UOMI under the normal regulatory process

38. The normal UOMI rate-setting process is undertaken on a continuous basis by officials. Under this process, the rates of UOMI have to be adjusted whenever either of the tracking series for the under- and over-payment rates changes by a certain amount. That amount is 100 basis points since the last UOMI review, or 20 basis points over a 12-month period.

39. Officials have noted there is a chance that UOMI rates will be updated given the current direction of the underlying series that are tracked in the formulas. If the Official Cash Rate were to be cut as a monetary policy response to COVID-19 (expected by some sectors), this would increase the likelihood that either of the tracking series will fall by enough to trigger a UOMI rate review.

40. If a rate review were triggered, then the rate of UOMI would be lowered through the normal regulatory process. Officials' current recommendation is to allow this process to occur rather than pre-emptively cutting the rate or changing the formula. Based on the current floating first mortgage rate, the rate of UOMI would be reduced from 8.35% to 7.76%.

Fiscal impacts

UOMI remission

41. 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.

42. There are, however, a number of risks associated with this proposal:

    42.1 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

    42.2 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.

43. 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.

44. These risks will impact on the fiscal position if they materialise. We are unable to quantify the materiality of the potential impacts.

Information sharing

45. There are no fiscal impacts for the proposals relating to information sharing.

Administrative implications

46. 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.

47. 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 Budget 2020 items, further COVID-19 responses, and the impact of reduced baselines due to the reduction of time-limited funding.

48. 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.

49. 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.

50. 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.

51. Note that these proposals are potentially smaller than economy-wide initiatives that could be announced in future as a response to COVID-19. Any allocation of resources now not only detracts from current business operations but may also impose constraints on resourcing future responses to COVID-19.

Next steps

52. Based on the measures you agree to, we will provide you with a finalised paper on Thursday 12 March for you to take to the Ad Hoc Cabinet Committee on COVID-19 (CVD) on 18 March 2020.

53. The finalised CVD paper that you take on 18 March 2020 will seek policy approval for the tax measures you agree to in this report. Subject to CVD's agreement, there are two options for legislating. Either:

    53.1 CVD delegates authority to the Minister of Revenue to introduce a bill containing the measures as soon as practicable; OR

    53.2 A paper is taken to Cabinet Legislation Committee on 31 March 2020 authorising the introduction of a tax bill containing the measures.

Regulatory Impact Assessment

54. The Regulatory Impact Assessment requirements apply to the proposals recommended in this report. However, owing to the short time frame available to develop a response to the COVID-19 outbreak no impact analysis has been prepared. The Treasury therefore recommends that a Supplementary Analysis Report (SAR) is provided to Cabinet ahead of a Bill containing these proposals being agreed and introduced.

55. If the Bill containing these proposals goes to the Cabinet Legislation Committee on 31 March 2020 a SAR on the proposals will be provided at that time.

56. If Cabinet instead delegates authority to the Minister of Revenue to introduce the Bill as soon as practicable there will likely be no opportunity for a SAR to be provided to Cabinet before introduction.

Recommended action

We recommend that you:

1. **note** that we will provide you with a finalised paper on Thursday 12 March to take to the Ad Hoc Cabinet Committee on COVID-19 (CVD) on Wednesday 18 March 2020;

   Noted Noted

2. **agree** to include the UOMI remission measure in the Cabinet paper;

   Agreed/Not agreed Agreed/Not agreed

3. **agree** to include the information sharing measure in the Cabinet paper;

   Agreed/Not agreed Agreed/Not agreed

4. **note** that the standard UOMI rate-setting review process is expected to lead to a reduction in the rate of UOMI in April 2020;

   Noted Noted

5. **note** the following fiscal implications:

   5.1 Remission of UOMI has no fiscal cost;

   Noted Noted

   5.2 Expanding Inland Revenue's information sharing powers has no fiscal cost;

   Noted Noted

6. **Agree**, subject to the agreement of CVD, to one of the following options for legislating the tax measures recommended in this report, either:

   6.1 CVD delegates authority to the Minister of Revenue to introduce a bill containing the measures as soon as practicable;

   Agreed/Not agreed Agreed/Not agreed

   OR

6.2 A paper is taken to Cabinet Legislation Committee on 31 March 2020 authorising the introduction of a tax bill containing the measures (*officials' preference*).

Agreed/Not agreed

Agreed/Not agreed

s9(2)(a)
[redacted]

Acting Team Leader
The Treasury

s9(2)(a)
[redacted]

Policy Lead
Policy and Strategy, Inland Revenue

Hon Grant Robertson
Minister of Finance
/ /2020

Hon Stuart Nash
Minister of Revenue
/ /2020