

Sensitive

Office of the Minister of Revenue

Cabinet

ORDER IN COUNCIL: GOODS AND SERVICES TAX (GRANTS AND SUBSIDIES) AMENDMENT ORDER 2020, AND AMENDED APPLICATION DATES

Proposal

1. This paper seeks Cabinet's agreement to submit an Order in Council amending the Goods and Services Tax (Grants and Subsidies) Order 1992 to the Executive Council. The amendment would exclude the following payments from the application of goods and services tax:
 - 1.1 the COVID-19 Wage Subsidy as referred to in the Cabinet paper titled "COVID-19 financial support, Paper A: Business Continuity Package: Targeted wage subsidy scheme"; and
 - 1.2 the COVID-19 Leave Payment as referred to in the Cabinet paper titled "COVID-19: Financial Support Paper B: COVID-19 Leave Payment Scheme".
2. The design and scope of these payments were both agreed to by Cabinet on 16 March 2020.
3. It also seeks Cabinet's agreement to amend application dates for certain COVID-19 related tax measures approved by Cabinet on 16 March 2020 (CAB-20-MIN-0103 and CAB-20-MIN-0108 refers).

Policy

Excluding goods and services tax (GST) from the Wage Subsidy and the Leave Payment

4. The Goods and Services Tax Act 1985 generally treats any government grant or subsidy payment as subject to GST when received by a GST-registered person such as a business. Recognising that this approach might not always be appropriate from a policy perspective, the Goods and Services Tax Act 1985 allows certain grants and subsidies to be excluded from the application of GST through an Order in Council which specifically lists the grants and subsidies to which GST should not apply.
5. I propose an Order in Council be made to amend the Goods and Services Tax (Grants and Subsidies) Order 1992 to add the COVID-19 Wage Subsidy and the COVID-19 Leave Payment ("the payments") to the schedule of grants and subsidies which are not subject to GST.

6. In absence of the amendments, GST-registered businesses would be required to account for output tax on the payments received. Therefore, the effect of these amendments is to allow GST-registered businesses to use the full amount of the payment received to provide financial support to their employees during self-isolation (in the case of the Leave Payment) and to assist in adjusting to the impact of COVID-19 (in the case of the Wage Subsidy). It will ensure fairness between businesses that are registered for GST and those that are not, and will minimise compliance costs.
7. This approach is consistent with the approach taken in respect of the subsidies provided to businesses impacted by the Hurunui and Kaikoura earthquakes in 2016, which were also not subject to GST.
8. Finally, I also propose that this GST treatment apply in respect of the payments made under both schemes, which have been available since 17 March 2020. The Order in Council will ensure no payments made from the date it comes into force will be subject to GST. This will provide businesses with immediate certainty regarding the GST treatment of these payments.
9. A further legislative amendment is necessary to ensure that payments made before the Order in Council comes into force will also not be subject to GST. I propose this amendment be included in the bill containing tax measures in response to COVID-19 that was agreed to by Cabinet on 16 March 2020 and which is to be introduced in early April.

Amending the application dates for COVID-19 tax measures

10. On 16 March 2020 Cabinet agreed that the provision allowing Inland Revenue to share information with other departments for COVID-19 should apply from the date of enactment (CAB-20-MIN-0103 refers). The information sharing should instead apply from the date of announcement of the payments on 17 March 2020. The information sharing will enable Inland Revenue to disclose employer and employee information to the Ministry of Social Development, and is especially important in limiting the risk of fraud.
11. Cabinet also agreed on 16 March 2020 to increase the low-value asset write-off threshold from \$500 to \$5,000 for the 2020-21 income year, and then reducing it to \$1,000 for the 2021-22 and later income years (CAB-20-MIN-0108 refers). This increase to \$5,000 should instead apply for property acquired within 12 months of the announcement date, 17 March 2020. At the end of this 12-month period, the threshold should be reduced to \$1,000. This will mean that businesses' purchasing decisions are treated equally for these purposes rather than being affected by their balance dates.

Fiscal cost

12. There is no fiscal cost of the proposal in this paper. GST revenue from the COVID-19 Wage Subsidy and COVID-19 Leave Payment is not built into the revenue forecasts. Consequently, removing GST from the subsidies will have no effect on forecasts.

Timing and 28-day rule

13. A waiver of the 28-day rule is sought because of the urgency of the move, and the power it confers will apply to events before the making of the Order. A waiver of the 28-day rule will enable the Order to take effect on the day of its notification in the *Gazette*.

Compliance

14. The Order in Council complies with the following:

14.1 The principles of the Treaty of Waitangi	Not applicable
14.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993	Not applicable
14.3 The principles and guidelines set out in the Privacy Act 1993	Not applicable
14.4 Relevant international standards and obligations	Not applicable
14.5 The Legislation Guidelines (2018 edition) which are maintained by the Legislation Design and Advisory Committee	Compliant

Regulations Review Committee

15. Officials believe there are no grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

16. The regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet, except that they will come into force earlier than the 28th day after the date of their notification in the *Gazette*.

Impact Analysis

17. The proposal does not require the preparation of a regulatory impact assessment.

Proactive Release

18. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers in whole within 30 working days of Cabinet making final decisions.

Consultation

19. Inland Revenue officials have consulted with the Treasury who agreed with the proposal in this paper. Inland Revenue officials have also informed the Ministry of Social Development and the Ministry of Business, Innovation and Employment.

Recommendations

I recommend that Cabinet:

1. note that on 16 March 2020 Cabinet agreed to the introduction of the COVID-19 Wage Subsidy scheme;
2. note that on 16 March 2020 Cabinet agreed to the introduction of the COVID-19 Leave Payment scheme;
3. note that an Order in Council under the Goods and Services Act 1985 is required to declare that the COVID-19 Wage Subsidy and the COVID-19 Leave Payment (“the payments”) will not be subject to goods and services tax (GST);
4. authorise the submission to the Executive Council of the Goods and Services Tax Grants and Subsidies) Amendment Order 2020;
5. note that applications for the COVID-19 Wage Subsidy scheme and COVID-19 Leave Payment scheme opened on 17 March 2020;
6. agree that the Goods and Services Tax (Grants and Subsidies) Amendment Order 2020 should apply in respect of all payments made under the schemes in recommendations 1 and 2 from the date the Order comes into force;
7. agree that an amendment should be included in the Bill containing tax measures agreed to by Cabinet on 16 March 2020 which ensures that GST does not apply to the payments made between 17 March 2020 and the date the Order comes into force;
8. note that a waiver of the 28-day rule is sought because of the urgency of the move, and the power it confers will apply to events before the making of the Order; and
9. agree to waive the 28-day rule so that the Order can come into force on the day of its notification in the *Gazette*;
10. note that on 16 March 2020, Cabinet agreed that the provision allowing Inland Revenue to share information for COVID-19 outbreak related purposes should apply from the date of enactment (CAB-20-MIN-0103 refers);
11. agree that Cabinet rescind the decision referred to in recommendation 10 and instead agree to enable Inland Revenue to share information for COVID-19 outbreak related purposes from the date of announcement, 17 March 2020;
12. note that on 16 March 2020, Cabinet agreed that the threshold for low-value asset write-off threshold be increased from \$500 to \$5,000 for the 2020-21 income year, reducing to \$1,000 for the 2021-22 and later income years (CAB-20-MIN-0108 refers); and

13. agree that Cabinet rescind the decision referred to in recommendation 12 and instead agree to the threshold being \$5,000 for property acquired within 12 months of the announcement date (17 March 2020), and at the end of this 12-month period the threshold should be reduced to \$1,000.

Authorised for lodgement

Hon Stuart Nash
Minister of Revenue

Proactively Released