Inland Revenue
Te Tari Taake

POLICY AND STRATEGY

Tax policy report: General ability for the Commissioner to vary timeframes and modify procedural requirements

Date:	8 April 2020	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2020/196

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendat ons **Refer** a copy of this report to the Minister of Finance for his information	9 April 2020

Contact for telephone discussion (f required)

Name	Pos tion	Telephone
s9(2)(a) [redacted]	Policy Lead	s9(2)(a) [redacted]
	Senior Policy Advisor	

8 April 2020

Minister of Revenue

General ability for the Commissioner to vary timeframes and modify procedural requirements

Purpose

1. This report seeks your agreement to a legislative amendment to provide the Commissioner of Inland Revenue (the Commissioner) with discretion to vary dates and timeframes and modify procedural requirements that are specified under the Revenue Acts, or provisions of the Unclaimed Money Act 1971 administered by Inland Revenue. This provision would apply for those who are impacted by COVID-19 and may otherwise face difficulty in complying with the legislative requirement.

2. While there are some existing options for providing flexibility in how a customer may meet their obligations, these generally require the making of Orders in Council, which inhibits the ability of Inland Revenue to respond to taxpayers impacted by COVID-19.

3. This proposal is also included in a draft paper for consideration by the COVID-19 Ministerial group.

4. If Cabinet agrees to this proposal, the amendment would be included in an omnibus bill with additional Government response measures to COVID-19.

Proposal

5. This proposal would introduce a discretionary power into the Tax Administration Act 1994 (the TAA) to allow the Commissioner to specify an extension to due dates, timeframes or to modify procedural requirements set out in the Revenue Acts administered by Inland Revenue[1]. This should also extend to the provisions of the Unclaimed Money Act 1971 that are administered by the Commissioner of Inland Revenue. These would not change the underlying time frames or rules set out in legislation, however if a person met the extended timeframe, or a modified procedural requirement, they would be treated as meeting the applicable obligation set in legislation.

6. In general, taxpayers are expected to comply with due dates and other requirements and are advised to contact Inland Revenue if their individual circumstances impact their ability to comply with tax legislative requirements. In emergency situations or adverse events there are a range of measures that may be engaged to provide further flexibility to groups of taxpayers impacted by these events, for example the remission of use of money interest or certain penalties. In a wide scale event, such as the current pandemic, there is likely to be a number of taxpayers who are impacted in multiple areas across tax types and other products administered by Inland Revenue.

7. We are seeing multiple issues arise for taxpayers concerned with meeting obligations and it can be difficult to anticipate all the issues which may occur across all types of taxpayers. In some cases, particularly where the requirement relates to social policy, it is important that Inland Revenue responds quickly to ensure

[1] The Inland Revenue Acts are listed in a Schedule to the Tax Administration Act 1994 and include: Child Support Act 1991, Goods and Services Tax Act 1985, Income Tax Act 2007, KiwiSaver Act 2006, Student Loan Scheme Act 2011, Tax Administration Act 1994 and the Taxation Review Authorities Act 1994.-

entitlements continue and that taxpayers are not penalised by the current circumstances.

8. It is acknowledged there are other existing mechanisms available which could facilitate varying the due dates and other requirements of the Revenue Acts. However, these provisions generally require an Order in Council to be made. Given the process and time required for an Order in Council, we consider providing a time-limited discretion to allow the Commissioner to extend due dates and timeframes or to modify other procedural requirements is a more efficient way to respond quickly and provide relief to persons affected by COVID-19.

9. To recognise that this proposal, spurred by current events, would provide the Commissioner with an additional discretionary power, the provision should be time-bound to reflect the expected length of time within which most disruption to ordinary practices is expected to occur. We recommend the discretionary power be conferred for a period of 18 months (this could be extended by Order in Council).

Examples

10. The following are examples of timeframes or procedural requirements the discretion could be applied to:

    10.1 Due dates and timeframes for certain disclosures of information, such as those required when filing a tax return;

    10.2 Due dates for payment of provisional and terminal tax;

    10.3 Extension of the period a person is present in New Zealand before they are liable for tax in NZ (to account for stranded non-residents becoming residents unintentionally. This recognises that the legislation relies on day count tests (either the 92 or 183 day rules);

    10.4 Response periods and time frames involved in the disputes process. There is some current flexibility which may be effective, however it has never been applied in a case such as this before. Allowing extensions for taxpayers affected by COVID-19 would put the matter beyond doubt;

    10.5 Requirements for obtaining IRD numbers – both potential timeframe and modifying requirements where appropriate. For instance, to allow parents receiving the family tax credit additional time to provide a tax file number for their child. Currently, if no number can be provided within a specified period, the Commissioner must stop payment to the parent;

    10.6 To increase the time-bar period in which the Commissioner may refund tax. This reflects that applying for refunds may not currently be top of mind for taxpayers or something they are able to dedicate resources to, and more time may be warranted.

The discretion would be exercised in a way that is taxpayer friendly and consistent with maintaining the integrity of the tax system

11. This provision would be restricted only to modifications which are taxpayer friendly. That is:

    11.1 Customers may always choose to comply in the way set out in the legislation rather than in line with any published modifications.

    11.2 Modifications would be made to either provide taxpayers with more time or modify a procedural requirement in a way that provides additional options or less onerous compliance requirements.

12. In addition, any discretion should only be exercised in a way that is consistent with maintaining the integrity of the tax system. That is:

    12.1 The modifications should only apply to those customers who have been impacted by COVID-19 (including any response actions taken by the Government, such as restrictions on operating at the Level 3 or 4 Alert level).

    12.2 Consideration should be given to how to balance the benefits of receiving information and tax payments on time against the current challenges that an affected taxpayer may be facing.

13. This change would support the intent to not make wholesale changes to due dates, and instead target flexibility for those taxpayers who are affected. This distinction recognises that some taxpayers won't be affected in a way that inhibits their ability to file returns or pay tax. We also want to ensure that information is filed where possible, even when payment may be delayed, as this information often flows through to other services. For example, employment income information is used to check the right Working for Families entitlements are being delivered.

The discretion would be responsive to taxpayer needs and communicated clearly

14. Currently there is some ability to vary legislative requirements under provisions in either the TAA or the Epidemic Preparedness Act 2006 (the EPA). However, a more efficient way to address compliance challenges for those affected by COVID-19 would be explicit administrative flexibility to allow the Commissioner to set alternative time frames or modify requirements to provide a more practicable option for taxpayers. This would mean an Order in Council would not be required each time a new compliance issue was raised.

15. Any alternative date, timeframe, or modified requirement would be published on the Inland Revenue website and communicated to customers. This reflects the importance of providing transparency and certainty to customers.

Current flexibility provisions require the making of an Order in Council

16. There are current provisions which provide for flexibility in the administration of tax obligations. Broadly, these are existing powers in the Tax Administration Act and for emergency situations, provision is made available under the EPA.

17. The TAA provides for the making of an Order in Council to extend the time for completing any obligation under the TAA, the Income Tax Act 2007 or the Goods and Services Tax Act 1985. This provision does not provide any ability to provide flexibility for dates in other Revenue Acts (for example the Child Support Act 1991 or Student Loan Scheme Act 2011).

18. The EPA provides for the making of an Order in Council to modify any requirement or restriction imposed by an enactment, either prospectively or immediately[2]. While these provisions could be used to extend timeframes or other requirements in tax legislation, this would require an Order in Council to be made each time a requirement is identified that poses a challenge for administrative flexibility.

19. Section 15 of the EPA provides for immediate modification orders. For these to be made it must be impossible or impracticable to comply fully with the relevant section. This is a high bar and may not be met for all customer circumstances, where it may be possible to comply but the taxpayer would be expected to face undue compliance costs in doing so.

[2] Section 12 of the EPA modifies on a prospective basis, section 15 provides for the modification to be made with immediate effect.

20. These options provide the ability to respond to taxpayer concerns, however all require some process to be followed. Officials consider that immediate response to taxpayer concerns is desirable.

The Commissioner's care and management power

21. The Commissioner is charged with the care and management of taxes, and to protect the integrity of the tax system. She has the duty to collect the highest net revenue over time, and to take into account taxpayer voluntary compliance. Section 6A of the TAA provides the Commissioner with discretion over managing her limited resources to pursue these objectives and maximise the taxes collected.

22. While this provision offers some flexibility with how the Commissioner may enforce or seek to collect tax, there are tensions in how far that can extend to effectively modifying the application of the enacted law – for example, it does not allow the Commissioner to formally modify taxpayer obligations and entitlements or issue concessions outside of the law, such as alter due dates or other procedural requirements. The proposed amendment would provide the Commissioner, for a limited timeframe, a wider and more flexible discretion to alter some legislative requirements to assist taxpayers.

Application date

23. The application date should be back-dated to allow the Commissioner to extend the time or modify requirements for obligations that have arisen from 17 March 2020 where appropriate. This aligns with the application date of certain tax-related measures enacted in the COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020.

24. Also this would allow the Commissioner to provide flexibility to requirements which have arisen following the end of the 2019/20 tax year.

Administrative implications

25. There are likely to be system implications although these will need to be worked through on a case by case basis.

26. Inland Revenue would need to develop a robust process to identify and assess whether requirements should be modified, and if they should, then what modifications are appropriate. The process would also need to take into account how to restrict the extension to those who are impacted by COVID-19 events, and a process for effectively communicating the varied requirements.

Consultation

27. The Treasury has been consulted on this proposal.

Next steps

28. This proposal is included in a draft paper to the COVID-19 Ministerial group.

29. If approved, this change could be included in an upcoming bill led by PCO with further measures to respond to COVID-19.

Recommended action

We recommend that you:

30. **agree** to an amendment to the Tax Administration Act 1994 to provide flexibility to extend due dates, timeframes or modify procedural requirements for taxpayers who are impacted by COVID-19;

    Agreed/Not agreed

31. **agree** that this should be back-dated to apply for requirements that have arisen from 17 March 2020;

    Agreed/Not agreed

32. **agree** that this provision should be time-limited to only apply for 18 months, and to include an empowering provision to allow this to period to be extended by the making of an Order in Council.

    Agreed/Not agreed

33. **note** that this proposal is included in a draft Cabinet paper on supporting small and medium sized enterprises during COVID-19 for consideration by the COVID-19 Ministerial Group.

    Noted

34. **refer** a copy of this report to the Minister of Finance for his information.

    Referred/Not referred

s9(2)(a)

Policy Lead
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2020