

Regulatory Impact Statement

Canterbury Earthquake: Extensions of time for meeting tax obligations

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Inland Revenue.

It provides an analysis of options to allow time limits in tax legislation to be extended, when people have been unable to meet the limits because of the Canterbury earthquake.

Three main options have been analysed. These are:

- giving Inland Revenue a broad power to extend any time limit in a case that warrants it;
- providing for a blanket extension of time limits for all taxpayers likely to have been affected; and
- giving Inland Revenue the power to provide specific extensions of specific time limits.

Our preferred option is the first option, because it provides the best targeted solution at a low cost. It does involve some compliance and administrative costs, which may be able to be mitigated by efficient implementation.

An important constraint on the analysis was the short time allowed for it. It has not been possible in the time available to gather comprehensive and reliable information about the nature and extent of the problem, or to accurately quantify the costs and benefits of alternative options.

Partial consultation was undertaken. The Treasury has agreed with our preferred approach. The New Zealand Institute of Chartered Accountants has also agreed with the broad approach, but was given very little time to consider it. We have also begun consultation with the Canterbury Earthquake Recovery Commission, but have not completed this yet.

We note that the preferred option would have retrospective application. This would typically be to the benefit of taxpayers, since retrospectivity will excuse late actions that should already have been performed. In rare cases, however, it could be to the detriment of a taxpayer (and there is no explicit right of appeal). The safeguard in those cases is that time limits may only be changed if this is fair and equitable in the circumstances.

We also note that costs may be imposed on businesses under the preferred option because of actions they may need to take to qualify or apply for time extensions, and because there may be cases where the preferred option has retrospective application. However, these costs are expected to be minimal and Inland Revenue will design the approach to minimise any costs as far as possible.

Except as may be noted in this statement, none of the policy options is likely to impose additional costs on businesses, impair private property rights, restrict market competition, or reduce the incentives on businesses to innovate and invest, or override fundamental common law principles.

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STATUS QUO AND PROBLEM DEFINITION

1. Following the Canterbury Earthquake, many New Zealanders have been unable to meet time limits for meeting tax obligations. They may have been unable to meet time limits because they were preoccupied with more immediate concerns, such as obtaining necessities, or the safety of family members. Actions might also have been delayed when it was physically impossible to perform them, such as when necessary tax records were held within the 'red zone', or because postal or telephone services were disrupted. In these cases taxpayers outside the Christchurch area may also have been affected.
2. There are many statutory time limits in the Inland Revenue Acts (there are 16 current Inland Revenue Acts including the Income Tax Act, the GST Act, the Tax Administrations Act, the Student Loan Scheme Act, the Child Support Act and the Kiwisaver Act).
3. It would be unreasonable to penalise taxpayers for exceeding a time limit when they have been prevented by the earthquake from meeting it.
4. There may also be some cases, though expected to be rare, where it would be unreasonable to penalise Inland Revenue for failing to meet statutory time frames that apply to it.
5. Inland Revenue is able to extend time limits in some cases and has been doing so to the maximum extent possible when taxpayers have requested this. However, there are numerous cases where it does not appear to be possible to extend time limits under existing law, and other cases where authority for extending time limits may be unclear. For example, Inland Revenue cannot extend the period for filing of 2009-10 income tax returns past 31 March 2011.
6. Section 226 of the Tax Administration Act 1994 gives the Governor General the power to extend any time for doing something under the Income Tax Act or the GST Act, by Order in Council. This power is not suitable in the current circumstances because it does not apply to all Inland Revenue Acts, it requires that a specific time be set for each time limit, and the power may not be delegated to the Commissioner of Inland Revenue, which would make administration impractical (many time limits are likely to be involved).
7. If time limits are not able to be extended, it is expected that many taxpayers will fail to file returns by their due date. These taxpayers will not be charged penalties or interest because of the lateness as these have already been remitted. Lateness may, however, have other consequences, such as losing credit for "good behaviour" in some provisions. This is likely to be seen as heavy-handed and could affect voluntary compliance.
8. Not providing extensions will also mean that taxpayers miss out on benefits that they otherwise would have been entitled to. Again, this could be seen as unfair. For example, parents are required to provide Inland Revenue with a child's IRD number within 8 weeks of Working for Families payments starting. If this is not done, IRD is required to stop making the payments until the number is received.
9. In the time available we have not been able to quantify the scale of the problem, but it is likely to be significant. For example, there are many different returns that must be filed on or around 31 March. Due to the inability for many businesses in the CBD to access their records, we expect many businesses will not to be in a position to file these returns on time.

OBJECTIVES

10. The government wishes to be able to extend time frames for meeting tax obligations in cases where people have been prevented from meeting those time frames by the Christchurch Earthquake and its aftershocks.

11. In general the government does not wish to extend time limits in cases where obligations might reasonably have been met. Instead, it would like to confine extensions to cases in which an extension would be fair, and in which the obligation is eventually met in a time that is not unreasonable.

12. The best outcome would be one in which time frames are extended in these circumstances.

13. The outcome needs to be achieved more or less immediately, because time limits are already being exceeded.

14. Given these objectives, assessment criteria for any outcome will include:

- Allowing limits to be extended when there is demonstrable need; and
- Not allowing limits to be extended when there is not demonstrable need.

15. Added to these criteria, it will also be important to consider:

- Administrative and compliance costs; and
- Fiscal costs.

16. As consideration of the options below demonstrates, there may be trade-offs between these objectives. For example, keeping extensions well-targeted to cases of demonstrable need may increase administrative or compliance costs because taxpayers need to demonstrate a need.

REGULATORY IMPACT ANALYSIS

Main options

17. Three main options have been identified for dealing with the problem.

18. We have not identified any non-regulatory options. The core problem is the lack of existing legal authority to extend fixed time limits. This cannot be remedied without legislative change.

First option

19. The first and preferred regulatory option is to provide Inland Revenue with a power to extend the time for doing anything under an Inland Revenue Act when:

- It has not been possible to meet the time limit because of the Canterbury earthquake or its aftershocks; and

- It would be fair and equitable to extend the time.

20. As a consequence of the “fair and equitable” requirement, it is expected that extensions would be given only for a reasonable period (for example, until the earliest time at which the person might reasonably be able to perform the action).

21. The power would apply retrospectively from 4 September 2010, to deal with cases in which time limits have already been exceeded. The power would expire on 1 April 2012 (though it may cease to be used before this time).

22. This option would deal with the problem. It would allow for time limits to be extended, but only in cases where obligations would not reasonably be able to be complied with.

23. The main benefit would be to relieve earthquake victims or those they deal with from the burden of unreasonably having to meet time limits to comply with the law or claim a benefit they should be entitled to. This is an unquantifiable benefit.

24. In principle this option neither materially reduces the amount of tax collected, nor delays collection (the extension of a time limit simply recognises that there would not have been compliance with the time limit anyway). However, if the power continued to be used after September 2011, there might be reduced government revenue from use-of-money interest (before that time, use-of-money interest will already be able to be waived under an existing regulation).

25. This option does have administrative and compliance costs. Taxpayers would need to contact Inland Revenue to claim or apply for extensions of time, and Inland Revenue would need to process these applications or extensions. Inland Revenue would endeavour to reduce these costs through efficient administration (see *Implementation* below).

26. This option provides a lot of discretion to Inland Revenue, including the discretion to extend time limits applying to Inland Revenue itself. It would be important to ensure this power is exercised wisely. Inland Revenue advises that if the power is exercised in respect of time limits imposed on Inland Revenue itself, the discretion would not be delegated to anybody below the level of an Assurance Manager (who reports to a Group Manager). Some further discussion of this issue is included in the *Implementation* section below.

Second option

27. The second regulatory option is a blanket extension of time for all taxpayers likely to have been affected. Under this option, for example, all time limits could be extended by two months for anybody living in Christchurch. There would be no test of fairness of equity, and no requirement that a person be affected by the Earthquake to qualify.

28. This option would solve the problem for some affected taxpayers, but also for some unaffected taxpayers who might reasonably have met existing time limits. This makes it more likely that the options would result in a significant delay in tax collected. This option would also not deal with the problem for taxpayers outside Canterbury who may nevertheless have been affected.

29. This option would have administrative costs because Inland Revenue would need to identify taxpayers who qualify for the extension, which could be difficult depending on the

criteria used, and make appropriate changes to systems and procedures to ensure the extension applied automatically to these people. The option would have low or nil compliance costs for taxpayers making use of the extension.

Third option

30. The third regulatory option is legislation to override specific time limits. This differs from the first and second options, which apply generally to any time limit. This option is infeasible given the short time available for developing a solution. Even if it were not, it carries the high risk that a particular time frame would be overlooked.

31. The following table summarises the options we have considered.

| | Meets Objectives | Fiscal cost | Admin/Compliance costs |
|--|---|--|--|
| Option 1 (Commissioner discretion) | Yes | Possible but limited (if time limits are extended past September 2011) | Yes – requirement to make/process applications for extensions |
| Option 2 (Non-discretionary extension) | Yes – objective to extend time limits for those affected No – objective to not extend time limits beyond what is necessary | Likely (unquantified but potentially high) | Depends on the criteria for extension. Possibly lower than Option 1. |
| Option 3 (Individual time limits extended) | No – likely to miss relevant time limits due to time constraints | Possible but limited (if time limits are expected past September) | Yes – requirement to make/process applications for extensions |

Other design choices

32. Within any of the options, two further sub-options were considered.

33. The first sub-option is whether the ability to power time limits should be exercised where the time limit is a limit on Inland Revenue itself. The preferred sub-option is to allow the power to be exercised in such circumstances (it is anticipated that such use would be rare).

34. An example of a situation where Inland Revenue might need to exercise the power in this way is as follows: a taxpayer commences a disputes procedure by sending a document to Christchurch, where the document sits unopened in the ‘red zone’ (where Inland Revenue’s Christchurch office is) until after the allowable response period. When the response period ends before a response from Inland Revenue, the document is normally taken to have been

accepted as correct. However, Inland Revenue should have the ability to consider the document properly before acceptance.

35. Some taxpayers may be disadvantaged where Inland Revenue extends a time limit applying to itself. The example above is a case in point, since a taxpayer may have taken a position in the dispute which would have been accepted but for a change in the response period. After exercise of the power to change in the response period, Inland Revenue might challenge the unrealistic position.

36. Not having the ability to apply the power to itself would increase the risk of lost tax revenue.

37. It may be possible to take administrative actions to ensure that the power is not misused (see *Implementation* below). It is also noted that if the preferred option is adopted, there will be a legislated requirement that an extension be fair and equitable in the circumstances.

38. The second sub-option was whether or not to allow for a formal appeals or disputes process when a person disagrees with the exercise of the power.

39. The preferred sub-option is not to allow for such a process. In part, this is because there would be insufficient time to design a robust process. Other considerations are the likely cost of such a process and the fact that the preferred option would nearly always leave a taxpayer in a better position than before (or in the same position, if it was decided the power should not be exercised). There is a small risk with the preferred sub-option that taxpayers would not have a remedy in cases where they are made worse off (say when the power is applied to Inland Revenue itself). We consider this is reduced in the preferred option by the requirement that the extension may only be given if it is fair and equitable to do so. Finally, we note that under the Tax Administration Act, section 138E(1) does not allow challenges that relate to decisions of the Commissioner to extend time limits. In this regard, the preferred option is consistent with current law.

CONSULTATION

40. There was not time for a full consultation about this policy, which is a response to an emergency that could not have been anticipated.

41. However, we have consulted with the Treasury, which agrees with our preferred option.

42. We have also undertaken informal consultation with the New Zealand Institute of Chartered Accountants, which made representations about problems with time limits. They have agreed with the general approach we are taking, but we note that they were given extremely limited time to consider the issues.

43. We have also consulted with the Canterbury Earthquake Recovery Commission, which is a requirement of the Canterbury Earthquake Response and Recovery Act 2011 (the legislation under which the preferred option would be achieved). This process has not yet concluded.

44. The Department of the Prime Minister and Cabinet has been informed.

CONCLUSIONS AND RECOMMENDATIONS

45. The table above summarises the costs and benefits of each of the three options.
46. The first option (a broad power to extend any time limit where warranted) is our preferred option because it effectively solves the problem at low cost and would deal with a very wide range of situations taxpayer might find themselves in. The first option does involve some compliance costs for taxpayers – ringing or writing to claim or apply for extensions of time – but this is a small cost and administrative efforts will be made to reduce this cost. The other options either do not solve the problem quickly or carry a significant risk that people who are unaffected by the earthquake will benefit (at a cost to other taxpayers).

IMPLEMENTATION

47. Only initial consideration has been given to implementation of the preferred option.
48. It is expected that in some cases Inland Revenue would announce a generic extension of time applying to all taxpayers in a particular class of taxpayers. In others Inland Revenue would grant specific extensions to a single taxpayer.
49. At this stage, it is expected in almost all cases that taxpayers would need to contact Inland Revenue to claim or apply for the extension, rather than “self assessing” eligibility and simply performing a late action. Inland Revenue will have no other way of knowing that the person is eligible for the extension.
50. This will increase the number of contacts with call centres and other staff members within Inland Revenue. Measures to manage this have been discussed. For example, Inland Revenue might provide special 0800 numbers for people to call and apply for a particular extension. If such numbers were implemented, people would be able to leave a message with the necessary information and be contacted at a later time by Inland Revenue. This would reduce the risk of call overloading or long waits for assistance. However, it may also be possible to deal with contacts through normal channels.
51. There would also be an increase in work because of final processing of applications or claims. This would be managed within Inland Revenue’s existing workloads and funding. There is a risk that this would lead to delays in other areas, but this problem is expected to be short-lived if it occurs.
52. Electronic systems are not expected to be affected in any significant way. Inland Revenue is in a good starting position because extension of time limits is relatively normal (albeit not *all* the time limits that the Order would effect). Inland Revenue’s electronic systems therefore typically allow for the extension of dates. Many of the dates that are not commonly able to be extended would not have effects that require system changes; instead they would affect later processes such as audits, which rely on people rather than systems and are therefore more adaptable.
53. The proposed solution would grant a power to the Commissioner of Inland Revenue. The Commissioner would then delegate that power (as he delegates many of his other powers under Section 7 of the Tax Administration Act 1994) to other authorised employees and officers within Inland Revenue. Existing processes are in place for managing delegations to properly qualified staff members, and these mitigate the risk that a power would be mis-applied.

MONITORING, EVALUATION AND REVIEW

54. Inland Revenue has generic processes in place for monitoring the performance of areas that will be processing claims or applications for time extensions, and these would be likely to indicate any significant problems that arise with processing.

55. External organisations such as the New Zealand Institute of Chartered Accountants might also be expected to bring other problems, such as any unwillingness to apply the power when it is warranted, to our attention or to the attention of Ministers.

56. If the preferred option is implemented, it is planned that a general review will be carried out after approximately six months to determine if the power is still required. If no more extensions of time were being approved at this time, it might be desirable to revoke the power.