

# Further economic support for businesses affected by COVID-19 - urgent legislation enacted

► Tax Tips Alert May 2020



**As businesses continue to grapple with the economic implications of the COVID-19 pandemic, the Government has enacted urgent legislation to provide further economic support through a number of tax changes contained in the COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020 (the Act). The Act gives effect to a number of tax changes which were previously announced by the Government on 15 April. The key tax changes include:**

- a temporary measure allowing taxpayers to carry-back their tax losses
- granting the Commissioner of Inland Revenue with greater administrative flexibility, and
- clarifying the tax treatment of pension and benefit payments.

These changes build on those already enacted in March by the COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020. We have summarised the earlier changes in our previous [Tax Tips Alert](#).

The Minister of Revenue has described the changes as the “single biggest Government support package to businesses via the tax system in modern New Zealand history”, and has indicated that further support could be announced in the future.

## Loss carry-back

The amendments contained in this Act will effectively allow refunds of tax paid (including provisional tax paid for the 2020 income year or tax paid on 2019 profits) by businesses that will have tax losses in the 2020 or 2021 income years. This is a temporary measure that forms part of the Government’s assistance package for businesses affected by COVID-19 and will provide welcome immediate relief for those able to take

advantage of the change. Officials have indicated that a permanent scheme to replace these temporary rules is under development.

This measure recognises that many previously profitable businesses may find themselves in a tax loss position due to the impact of COVID-19. Businesses expecting to make a tax loss in the 2020 or 2021 income year

will be able to offset the loss against the prior year (i.e. 2020 losses will be able to be carried back to 2019 and 2021 losses will be able to be carried back to 2020) for which tax has already been paid, effectively “cashing out” current losses. The ability to carry-back the losses will allow businesses to realise a cash flow and timing benefit, instead of having to carry forward their tax losses against future taxable income.

We understand that Inland Revenue will be providing further guidance on the application of the new rules on Monday 4 May.

### Key features

A taxpayer can elect to carry back tax losses if they:

- have made a tax loss (or estimate a tax loss) in a “net loss year” i.e. in the 2019-20 or 2020-21 income year; and
- have taxable income in the income year before the “net loss year”, after subtracting the available tax loss from the taxpayer’s net income for the year; and
- are **not** a multi-rate PIE or qualifying individual in the net loss year, and not a multi-rate PIE in the taxable income year; and
- meet the shareholder continuity threshold during the relevant years (if the taxpayer is a company).

Subject to the above criteria, generally all types of entities (i.e. companies, trusts, and individuals) will be eligible to apply the carry-back rules.

It is important to note that a loss can only be carried back one year (e.g. a 2020 loss can only be used to offset 2019 taxable income) and that a business can carry back an estimated tax loss (i.e. there is no requirement to have filed the income tax return relating to the “net loss year” before losses can be carried back). However, a “square up” will be required when the income tax return for the relevant “net loss year” is filed and use-of-money interest will apply to excess tax refunded due to an overestimation.

Furthermore, the new rules will be subject to other general features of the tax system including the need to have a sufficient imputation credit account balance in order to have a refund of tax and the ability to offset losses with group companies.

The amount of tax loss that could be carried back would be the smallest of the following amounts:

- the estimated loss (in 2019–20 or 2020–21), before adjusting for the carry-back; or

- the taxable income in the previous year, before adjusting for the carry-back; or
- another amount determined by the taxpayer.

Taxpayers will not need to re-estimate their provisional tax before 7 May as the Act makes it possible to re-estimate after the final instalment date. While this grants more time, it may be difficult to forecast the losses a business will make during the year. If the loss is overestimated, interest could apply on underpaid tax.

There are further rules for members of wholly-owned groups. In this case, the tax loss component that can be carried back is only the amount that cannot be offset against profits within its wholly owned group in the loss year.

Taxpayers that elect to carry-back their tax losses can do so by adopting the tax position and seeking a refund of any provisional tax paid. If a tax return for the profit year has already been filed, then the taxpayer will need to request a reassessment to obtain the refund.

The rules will come into effect from 15 April 2020, which means that eligible taxpayers will be able to seek a refund from Inland Revenue immediately.

### PwC comment

Changes that look to provide relief to the cash flow constraints that businesses are currently experiencing due to COVID-19 will be welcomed. It will be interesting to see the immediate practical impact of the new rules for businesses in the light of some of the detailed design features of the rules including limiting the loss carry-back to one year only and the requirements around shareholder continuity (especially in the light of the announced proposed changes to relax these rules).

### Administrative discretion to change tax dates

The amendments contained in the Act will give the Commissioner of Inland Revenue (the Commissioner) discretionary powers to temporarily change due dates, timeframes, and procedural requirements in tax legislation for businesses and individuals affected by COVID-19. This includes, for example, when tax payments are due to be paid to Inland Revenue, and also the deadline for certain forms or disclosures to be submitted to Inland Revenue. This extension of due dates is also expected to be applied by the Commissioner to certain tax pooling deadlines provided taxpayers meet certain criteria, including being adversely affected by

COVID-19. The powers also give the Commissioner the ability to change the kind of information that is required to be provided by taxpayers.

These discretionary powers are intended to give the Commissioner greater flexibility to apply tax legislation in a fair and practical way in the present circumstances, and can be used at any time between 17 March 2020 and 30 September 2021 (although this can be extended by Order in Council).

Inland Revenue is required to publish any variation to tax rules made under this provision and to give the public notice as to any changes to their obligations.

Taxpayers can choose to apply the variation to the existing rules by taking a tax position to that effect e.g. by filing a tax return on that basis. If the taxpayer does not choose to apply a variation to the existing rules, they will be treated as having the usual rules apply to them.

The amendments giving effect to this new power will apply from 30 April 2020, being the date of enactment of the Act.

#### **PwC comment**

Businesses will likely continue to feel the economic impact of COVID-19 for a number of months to come. Therefore, it makes sense to give the Commissioner the flexibility to relax some of the administrative requirements that are imposed on taxpayers generally. It will be key that any variations will be communicated to businesses in a timely and effective manner so that businesses can have certainty in these uncertain times.

### **Small business cash flow scheme**

The Act establishes the legislative framework for a new loan scheme administered by Inland Revenue for small businesses affected by COVID-19 or related measures (e.g. restrictions imposed under the Alert Level system).

The scheme will provide interest free loans of up to \$100,000 for a year to businesses employing 50 or fewer full-time equivalent employees. A business will be eligible for \$10,000 and, in addition, \$1,800 per equivalent full-time employee (up to the maximum amount). The loan will be interest free if it is paid back within a year. The interest rate will be 3% for a maximum term of five years but there is no requirement to make any repayments for the first two years. In addition, businesses will also need to meet the same eligibility criteria as for the wage subsidy scheme and will have to declare that they are a viable business, that they will use the money for core

business operating costs, and enter into a legally binding loan contract.

The scheme will be administered by Inland Revenue and businesses will be able to apply from 12 May.

#### **PwC comment**

Cash flow is one of the most acute issues facing businesses, particularly small businesses in the current circumstances, and access to cash will be vital to help these businesses stay afloat. Given the nature of the small business sector, it will be particularly important that the application process is easy to navigate and that ongoing compliance obligations are not too onerous.

### **Tax treatment of Ministerial welfare programme**

Some individuals who would normally receive social benefit payments have been stranded overseas due to the COVID-19 pandemic and are therefore unable to receive the payments they are usually entitled to. The Government recently announced a new benefit payment (the COVID-19 NZSOS programme) which will ensure that these individuals continue to receive the same amount of money as they would normally receive if they were in New Zealand.

Amendments in this Act ensure that payments made under the COVID-19 NZSOS programme are treated the same way for tax and social policy purposes (e.g. Working for Families, student loan, and child support) as the payments that they are replacing.

### **Conclusion**

In the context of the current unprecedented public health and economic conditions, we welcome the ongoing work of the Government and officials to help businesses and individuals impacted by the COVID-19 pandemic. The measures contained in the Act are taxpayer-friendly and are intended to help support the economic recovery that will be required once the country returns to business as usual. We also appreciate that the measures contained in the Act represent good tax policy in and of itself and do not depart from New Zealand's usual tax frameworks.

Please contact your usual PwC adviser to find out how these new measures can help you and your business.



# New Zealand announces import duty concessions on essential goods, undertakes to facilitate trade in food and beverage products

In response to the ongoing COVID-19 pandemic, New Zealand entered into a declaration with Singapore to maintain efficient supply chains and ease trade pressure. Under the agreement, each country will remove import duty from essential goods imported from any country, such as PPE equipment, medical equipment, nutritional products, medicines, and hygiene supplies.

While the key focus is the removal of trade barriers for essential goods, New Zealand and Singapore (with other countries invited to follow suit) have also agreed not to apply export restrictions on, and to facilitate trade in, food and beverage products. Included is the option for participants to enter into separate agreements to also remove import duty from those products.

There is a long list of qualifying essential goods in Annex I of the declaration, as well as food and beverage products in Annex II. Businesses importing Annex I essential goods should ensure they are no longer paying import duty on these products as this will provide a real immediate commercial benefit. For businesses importing or exporting Annex II food and beverage products, the impact of the declaration remains a work in progress as it remains to be seen whether any participating countries will remove import duties from these products.

The declaration is a positive step to keep trade in essential goods moving efficiently. Other countries could take similar steps to remove tariff and non-tariff barriers to essential goods, as well as food and beverage products. If you have any questions on how these changes will impact your goods at the border, please get in touch with our customs specialists.

The New Zealand Government's announcement and the full text of the declaration can be found on the [Beehive website](#).

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