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Taxation (COVID-19 Resurgence Support Payments and Other Matters) Act 2021

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Public Act 2021 No 1

The Taxation (COVID-19 Resurgence Support Payments and Other Matters) Bill was passed under urgency on 16 February 2021. The new Act received Royal assent on 18 February 2021. It amends the Tax Administration Act 1994 and the Income Tax Act 2007.

The new legislation allows the Commissioner of Inland Revenue to make grants to eligible businesses impacted by increases to the COVID-19 alert levels and increases the minimum family tax credit threshold.

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COVID-19 Resurgence Support Payments Scheme

Sections 3, 7AAB, 7AAC, 157, and schedule 7 of the Tax Administration Act 1994; sections MB 13 and YA 1 of the Income Tax Act 2007

The Act provides authorisation for the Commissioner of Inland Revenue to make grants to eligible businesses under the COVID-19 Resurgence Support Payments Scheme (the scheme) and to administer the scheme on behalf of the Government.

Background

The Act contains a number of amendments to support the scheme to assist businesses who are adversely affected by increases to the COVID-19 alert levels.

The scheme is administered by Inland Revenue.

More detailed information on the operation of the scheme is available at

<https://www.ird.govt.nz/covid-19/business-and-organisations/employing-staff/financial-support/resurgence-support-payment>

Key features

The new Act makes the following changes to the Tax Administration Act 1994 (TAA).

- Inserting new section 7AAB authorising the Commissioner of Inland Revenue to make grants to eligible businesses.
- Inserting new section 7AAC which allows the scheme to be activated by Order in Council.
- Amending the definition of “tax” in section 3 of the TAA to allow Inland Revenue to use its existing debt management and care and management powers to administer the scheme.
- Amending schedule 7 of the TAA to allow the Commissioner of Inland Revenue to publish information relating to the scheme, including names of persons to whom the Commissioner has made a grant under the scheme.

Application date

The amendments apply from the date the Act received Royal assent.

Detailed analysis

The Act amends the Tax Administration Act 1994 and the Income Tax Act 2007.

Section 3 of the Tax Administration Act 1994

The definition of “tax” in section 3 of the Tax Administration Act 1994 is amended to include an amount payable in relation to the grant made under the scheme. The amendment would allow Inland Revenue to use its existing debt management and care and management powers to administer the grant.

Section 7AAB of the Tax Administration Act 1994

The new section 7AAB authorises the Commissioner of Inland Revenue to make a grant under the scheme to an eligible applicant when the scheme has been activated. The subsection (1) outlines:

- the main criteria for activating the scheme – an escalation in alert levels, and
- the main eligibility criteria – that the applicant has suffered a significant reduction in revenue as a result of the escalation in alert levels.

While the details of these two criteria have not been specified in the Act, the policies underpinning the scheme are as follows.

- The scheme may be activated when there is an increase in alert level from alert level 1 to alert level 2 or higher, and after remaining at an alert level higher than 1 for 7 days or more.
- A reduction in revenue of 30% or more constitutes “a significant reduction in revenue”. This is to be calculated by comparing a 7-day period at alert level 2 or higher with the typical weekly revenue in the 6 weeks preceding the move from alert level 1.
- The amount of decline in revenue will also be used to determine the size of the grant the applicant is eligible to receive. The amount of the grant will be the lower of the amount calculated using the formula (\$1,500 plus \$400 per FTE) and four times the amount the applicant’s revenue has declined by as declared by them in their application.

In the event of an increase in alert levels from alert level 1, subsection (2) authorises the Commissioner of Inland Revenue to make a grant under the scheme to an eligible person provided that the scheme has been activated by an Order in Council made under the new section 7AAC.

Once the scheme has been activated, subsection (3) requires the Commissioner of Inland Revenue to determine and publish the eligibility criteria and determine the terms and conditions of the scheme.

Subsections (6) and (7) require the entire amount of the grant, and any amount payable under the terms such as interest and penalties if any, to be paid back to the Commissioner of Inland Revenue under particular circumstances. This would ordinarily be when a person receives the grant despite not meeting the eligibility requirements, or when the recipient of the grant breaches the terms and conditions of the grant. However other circumstances may be specified in the terms and conditions.

Subsection (8) clarifies that the recipient of the grant must keep sufficient records to demonstrate that they meet the eligibility requirements and that they have not breached the terms and conditions. This information keeping requirement extends to the person who applied for the grant on behalf of the recipient.

Subsection (10) allows for the scheme to be activated and grants made under this scheme for increases in alert levels prior to the enactment of this Bill.

Section 7AAC of the Tax Administration Act 1994

The new section 7AAC allows the scheme to be activated by Order in Council. Such an Order in Council may describe a class or classes of persons who may apply for support under the scheme and specify:

- the period in which the scheme will operate
- the amount of the grant, and
- any amendments to the scheme as required.

Section 7AAC also allows the Order in Council to extend, renew, or replace a time limit in relation to the publication of information in relation to the scheme.

Section 157 of the Tax Administration Act 1994

The definition of "income tax" in section 157(10) of the Tax Administration Act 1994 is amended to include the entire amount of the grant that the recipient has to pay back. In the event that the recipient makes a default in the repayment of the grant to the Commissioner

of Inland Revenue, the Commissioner is able to pursue the outstanding balance by issuing a notice under section 157.

Schedule 7, part A, clause 13B of the Tax Administration Act 1994

The new clause 13B in schedule 7, part A, of the Tax Administration Act 1994 allows the Commissioner of Inland Revenue to publish information relating to the scheme. Information that the Commissioner intends to publish includes the names of the persons to whom the Commissioner makes a grant under the scheme. However, the Commissioner is limited in the types of information that can be published and the clause imposes a time limit of 24 months for the information to remain published. This time limit may be extended by Order in Council made under section 7AAC on the recommendation of the Minister of Revenue.

Although this is not specified in the Act, the current policy on the publication of information is that only the following will be published:

- the name of the recipient of the grant
- the amount paid, and
- the period of alert level escalation for which this payment relates.

However, the above will not be published if:

- the recipient has fewer than three employees, or
- the amount paid is capped four times the declared revenue decline.

The information will be published on a searchable database on the Inland Revenue website.

Section MB 13 of the Income Tax Act 2007

The amendment to section MB 13 of the Income Tax Act 2007 excludes a payment under the scheme from the calculation of a person's family scheme income. The rationale behind this is a grant made under the scheme is for business purposes only. As the grant is not available for private use, it should not be included in calculating a person's family scheme income.

Section YA 1 of the Income Tax Act 2007

The definition of "exempt interest" in section YA 1 of the Income Tax Act 2007 is amended to include interest payable in relation to the repayment of a grant under the scheme. This

amendment relates to resident withholding tax (RWT) and ensures the grant recipient does not have to deduct RWT on any interest charged by the Commissioner of Inland Revenue.

Minimum family tax credit threshold increased

Section ME 1 of the Income Tax Act 2007

The Act increases the minimum family tax credit (MFTC) threshold to align with the increases in benefit abatement thresholds.

Background

From 1 April 2021, the benefit abatement thresholds will increase, allowing beneficiaries to earn a greater amount of additional income before their benefits start to reduce. As a consequence, the MFTC threshold is increased from 1 April 2021.

Key features

The Act increases the MFTC threshold (described as the “prescribed amount” in section ME 1(3)(a) of the Income Tax Act 2007) from \$29,432 to \$30,576, for the purposes of calculating MFTC entitlements (section ME 1(2)). The increase in the prescribed amount represents a \$22 increase in weekly income for MFTC recipients.

Application date

The increase applies from 1 April 2021.

References

Legislative References

Tax Administration Act 1994: *sections 3, 7AAB, 7AAC, 157, and schedule 7*

Income Tax Act 2007: *sections MB 13, ME 1 and YA 1*

About this document

New legislation articles provide an explanation of the changes made in recently enacted tax-related legislation including acts, general and remedial amendments, and Orders in Council.