

The Treasury

Forests (Payment of Money) Order 2020 Information Release

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Office of the Minister of Finance
Chair, Cabinet Legislation Committee

Forests (Payment of Money) Order 2020

Proposal

1. I propose that the Cabinet Legislation Committee authorise the submission to the Executive Council of the attached Order in Council. The Order in Council will exempt from income tax a payment made to SILNA landowners (owners of land granted under the South Island Landless Natives Act 1906) for agreeing to enter into a conservation covenant.

Background

2. The South Island Landless Natives Act (SILNA) is a law that was passed on 20 October 1906. Its purpose was to alleviate the poverty of Ngāi Tahu by providing “landless natives” with an asset base in the form of land. Of this land, it is estimated that around 17,300 hectares remain under some form of indigenous forest cover and are referred to as SILNA forests.
3. In January 2002 Cabinet agreed to a policy for SILNA forests, which allows for sustainable management and provides protection of conservation values within SILNA forests [CAB Min (02) 12/4 refers].
4. The Department of Conservation has been implementing the conservation component of the 2002 SILNA policy package on behalf of the Crown. The Nature Heritage Fund (a contestable Ministerial fund) has been used to make monetary consideration payments for conservation covenants in perpetuity over blocks of SILNA land. Such consideration payments are based on the number of hectares, location, condition, and recreational potential of the forest.
5. As part of the 2002 SILNA policy package, Cabinet also agreed that an income tax exemption would be granted in respect of payments to SILNA owners in consideration for entering into conservation covenants. This policy allows for such income tax exemptions to be made retrospectively.
6. The Forests Act 1949, as amended by the Forests Amendment Act 2004, provides for a number of features of the policy package. The Amendment Act includes the ability for the Governor-General, on the recommendation of the Minister of Finance, to specify by Order in Council that a payment to enter into a conservation covenant over “specified Māori land” is not gross income.

7. To date, there have been four Orders in Council to exempt SILNA payments from income tax. Previous exemptions were granted retrospectively in 2004, 2006, 2009, and 2014.

The Payment

8. The attached Order in Council relates to a payment to the Rowallan Alton Incorporation, the owner of high conservation priority SILNA land, in exchange for entering into a conservation covenant. The Ministry for Primary Industries has confirmed that the payment relates to specified SILNA land within the scope of the 2002 SILNA policy package.
9. From October 2016 to November 2019, the Government has in total paid \$1,112,250 to the Rowallan Alton Incorporation, for entering into a conservation covenant over specified blocks of land in the Southland region.

Financial Implications

10. Providing this exemption will not impact tax forecasts or the operating balance. These payments were never intended to be subject to income tax and therefore are not included in current tax forecasts.
11. Although the policy intent was that the payments were never meant to be subject to tax, the Rowallan Alton Incorporation has advised that it included \$555,462.48 of the total \$1,112,250 as part of its taxable income for the year end 30 June 2019. At the Māori Authority tax rate, this represents \$97,205.94 of tax. Under current law, once the Order has been made, the Rowallan Alton incorporation would be able to request a reassessment for the 2018/19 year, to remove this income amount.
12. The remaining \$556,787.52 will be exempt from income tax for the 2019/20 income year, to give effect to previous policy decisions.

Timing and 28-day rule

13. The 28-day rule requires regulations to be notified in the *New Zealand Gazette* 28 days prior to their coming into effect. No waiver of the 28-day rule is proposed. The order will come into force on 23 April 2020.

Compliance

14. The Order in Council complies with each of the following:
 - 14.1. the principles of the Treaty of Waitangi;
 - 14.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 14.3. the principles and guidelines set out in the Privacy Act 1993;
 - 14.4. relevant international standards and obligations;

14.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

15. 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. Parliamentary Counsel has certified that the draft Order in Council is in order for submission to Cabinet.

Impact Analysis

17. Treasury's Regulatory Quality Team has determined that regulatory impact analysis is not required for the proposal in the paper on technical grounds because it provides solely for the commencement of existing legislation. Cabinet has previously agreed that such covenants over SILNA land should be exempt from income tax [POL Min (02) 8/6].

Climate Implications

18. The Ministry for the Environment has been consulted and confirms that the climate implications of policy assessment (CIPA) requirements do not apply to this proposal as the threshold for significance is not met.

Publicity

19. New regulations are publicised in the Gazette. The exemption will also be noted in Inland Revenue's *Tax Information Bulletin*, and the landowners' agents will be notified directly.

Proactive Release

20. I intend to proactively release this paper within 30 business days, subject to the redaction of any material as consistent with the Official Information Act 1982.

Consultation

21. The Ministry for Primary Industries has confirmed that the proposed exemption is within the scope of the 2002 SILNA policy package.
22. The following agencies have been consulted on a draft of this Cabinet paper: The Department of Conservation, Inland Revenue, The Ministry for Primary Industries, Te Arawhiti, and Te Puni Kōkiri.
23. The Department of the Prime Minister and Cabinet has been informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** the 2002 Cabinet decision to grant income tax exemptions to owners of SILNA (South Island Landless Natives Act) lands for entering into conservation covenants [CAB Min (02) 12/4 refers];
2. **note** that the Forests Amendment Act 2004, allows payments for covenants over specified Maori land to be declared “not gross income” by Order in Council;
3. **note** that the Forests (Payment of Money) Order 2020 will exempt from income tax payments of money made in the period beginning 31 October 2016 and ending on 19 November 2019, for entering into a conservation covenant;
4. **authorise** the submission to the Executive Council of the Forests (Payment of Money) Order 2020 [PCO 22681/1.6].

Authorised for lodgement

Hon Grant Robertson

Minister of Finance