

**STANDARD PRACTICE STATEMENT > INVESTIGATIONS**

## **Requests to amend assessments**

Issued: 2 June 2020

**SPS 20/03**

This standard practice statement updates and replaces all previous policies and standard practises regarding the exercise of the discretion under s 113, including SPS 16/01 *Requests to amend assessments* (*Tax Information Bulletins* Vol 28, No 4 (May 2016): 12) and Vol 29, No 3 (April 2017): 43) but excluding QB 09/04 *The relationship between section 113 of the TAA and the proviso to section 20(3) of the GST Act when a registered person has not claimed an input tax deduction in an earlier period* (*Tax Information Bulletin* Vol 21, No 6 (August 2009): 53).

**START DATE**

2 June 2020

**REPLACES: SPS 16/01**

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## Introduction

This Statement sets out Inland Revenue's practice for exercising the Commissioner of Inland Revenue's (the Commissioner) discretion under s 113 of the Tax Administration Act 1994 (the TAA) to amend assessments to ensure their correctness. It is intended both to provide direction to those Inland Revenue staff delegated to use the discretion in s 113 and to give guidance to taxpayers and their advisors in formulating requests for amendment.

All legislative references in this Statement refer to the TAA unless stated otherwise.

## Application

This Statement applies from 2 June 2020 and replaces SPS 16/01 *Requests to amend assessments* published in *Tax Information Bulletins* Vol 28, No 4 (May 2016): 12 and Vol 29, No 3 (April 2017): 43.

## Standard practice

### Summary

#### Section 113 and the Commissioner's discretion

1. The Commissioner acknowledges that in a self-assessment regime, taxpayers will occasionally take an incorrect tax position and that correcting these positions is an integral part of tax administration. Section 113 contains a broad discretion allowing the Commissioner to amend assessments to ensure their correctness.
2. The Commissioner's practice is generally to use the discretion to correct a tax position, subject to the criteria described in this Statement.
3. The criteria applied when determining whether to exercise the s 113 discretion are based on the care and management principles contained in ss 6 and 6A.

#### Care and management of the taxes

4. Section 6 requires that the Commissioner's best endeavours are used to protect "the integrity of the tax system", including public perception of that integrity. In carrying out this function, the Commissioner is bound not only to protect the rights of taxpayers to have their liability determined fairly, impartially and according to law, but also to have regard to the responsibilities of taxpayers to comply with the law. Section 15B sets out taxpayers' responsibilities.

5. To discharge her s 6A(2) duties, the Commissioner must compare the available courses of action with the likely effect on the amount of net revenue collected over time. To do this, the Commissioner must consider the short- and long-term implications of each course of action and have regard to all three factors listed in s 6A(2): available resources, the promotion of compliance (especially voluntary compliance) by all taxpayers and the compliance costs that they incur.
6. Inland Revenue has limited resources to undertake what can sometimes be a lengthy verification process to determine whether an assessment should be amended. Accordingly, it is consistent with the taxpayer obligation under s 15B and the Commissioner's duty under ss 6 and 6A(2) to limit the amount of time and other resources that will be spent investigating amendment requests. Because of this, not all requested amendments will necessarily be made.

### **The process for considering s 113 requests**

7. In considering s 113 requests, the Commissioner must be assured that the amendment the taxpayer seeks will ensure the assessment is correct when amended, even if it was also correct beforehand. Where the Commissioner is not initially persuaded that the amendment requested will result in a correct assessment, a decision must be made whether to commit Inland Revenue's limited resources to considering the request further.
8. Where the Commissioner does decide to commit appropriate resources to the issue and is satisfied that making the requested amendment will result in a correct assessment being made, the assessment will be amended. This is unless there is a residual reason, other than her limited resources, why the discretion should not be exercised.
9. The Commissioner's process for considering requests under s 113 is carried out under four possible phases (see further at [36]):
  - An initial examination of the request to see if the matter can be disposed of simply (either by making the amendment or not).
  - If it cannot, consideration of whether the Commissioner should apply additional resources to consider the request further.
  - Determine whether a correct assessment will result from the requested amendment.
  - Finally, determine whether there is any residual reason (other than limited resources) why the Commissioner should not make the requested amendment.

### **Considering simple amendment requests and voluntary disclosures**

10. The Commissioner will follow the process set out in this Statement in determining whether the amendment requested will lead to the making of a correct assessment.

11. There may be very clear errors that require little consideration. For instance, if a request is made to correct an arithmetic, transposition or keying error made by either the taxpayer or the Commissioner, the correction will be made without further consideration.

### **Factors the Commissioner may consider in more complex cases**

12. When exercising the s 113 discretion in more complex cases, the Commissioner will evaluate any amendment request using the care and management principles. To best inform this care and management decision, the Commissioner will objectively consider the relevant factors discussed in this Statement (as required on a case-by-case basis).

### **How does a taxpayer make a request to amend their assessment?**

13. Requests to correct clear errors, such as arithmetic, transposition and keying errors, may be made to Inland Revenue by telephone or in writing. The term "in writing" includes a taxpayer modifying their tax return by using myIR, as well as other communication with the Commissioner by electronic means.
14. Requests to amend returns where the tax effect of the amendment requested is \$10,000 or less may generally be made by telephone or in writing.
15. Requests to amend returns where the tax effect of the amendment requested is greater than \$10,000 must be made in writing.
16. Taxpayers or their agents making amendment requests must supply the Commissioner with all relevant information to substantiate the merits of the amendment requested.

### **How does s 113 reconcile with s 113A and the proviso to s 20(3) of the Goods and Services Tax Act 1985?**

17. Where the taxpayer is able to make the required correction for themselves in a later period (under s 113A or the proviso to s 20 (3) of the Goods and Services Tax Act 1985 (the GST Act)) the Commissioner's practice is (generally) not to expend limited resources considering whether to exercise the discretion under s 113. This is because both s 113A and the proviso to s 20(3) of the GST Act provide a specific mechanism by which the taxpayer is able to self-correct the error: the taxpayer does not need to use s 113 to make the correction. This outcome is more consistent with the scheme of the legislation which requires that taxpayers take responsibility for ensuring they make correct assessments.

### **What is the relationship between s 113 and s 22G of the TAA?**

18. Section 22G(3) provides that a qualifying individual may amend the income information in their final account at any time before their terminal tax date for the tax

year. The amended income information forms a new, original assessment and any earlier assessment for the tax year is regarded as not having been made. Because of this s 113 is not engaged in amending an assessment.

19. When a qualifying individual wishes to amend the information in their final account after their terminal tax date, or a taxpayer who is an “other income earner” wishes to amend their assessment after their account has been finalised, the taxpayer must either request an amendment from the Commissioner per s 113 or they may choose to issue a notice of proposed adjustment (NOPA) and enter the disputes process.

## Detailed discussion

### Section 113 and the Commissioner’s discretion

20. The Commissioner acknowledges that both taxpayers and the Commissioner will occasionally make errors and that correcting these is an integral part of tax administration.
21. Section 113 contains a broad discretion allowing the Commissioner to amend assessments to ensure their correctness. This Statement outlines the general principles that will be followed when a taxpayer requests that an amendment be made to their assessment.
22. The Commissioner will generally agree to amend assessments where the requested amendment is clearly correct. This is despite the fact that, as a matter of law, the Commissioner cannot be compelled either to investigate amendment requests or subsequently to amend the assessments.<sup>1</sup>
23. In determining whether to exercise the s 113 discretion, the Commissioner will evaluate an amendment request using the care and management principles in ss 6 and 6A balanced with the obligations of taxpayers to make correct self-assessments.
24. The care and management principles are discussed below. More detailed guidance can be found in Interpretation Statement IS 10/07 *Care and Management of the taxes covered by the Inland Revenue Acts – Section 6A(2) and (3) of the Tax Administration Act 1994*.<sup>2</sup>

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<sup>1</sup> *Commissioner of Inland Revenue v Wilson* (1996) 17 NZTC 12,512 (CA); *Lawton v Commissioner of Revenue* (2003) 21 NZTC 18,042 (CA).

<sup>2</sup> More information on this statement can be found at <https://www.taxtechnical.ird.govt.nz/> (search keywords: Care and management).

## Care and management of the taxes

### Section 6: Integrity of the tax system

25. Section 6 requires the Commissioner to use her best endeavours to protect “the integrity of the tax system”, including public perception of that integrity. In carrying out this function, the Commissioner is bound not only to protect the rights of taxpayers to have their liability determined fairly, impartially and according to law, but also to have regard to the responsibilities of taxpayers to comply with the law. Section 15B sets out taxpayers’ responsibilities and, in particular, the obligations to:
- (aa) if required under a tax law, make an assessment:
    - (a) unless the taxpayer is a non-filing taxpayer, correctly determine the amount of tax payable by the taxpayer under the tax laws:
    - (b) deduct or withhold the correct amounts of tax from payments or receipts of the taxpayer when required to do so by the tax laws:
26. Given this, the Commissioner may consider a taxpayer’s compliance history when deciding whether to exercise the discretion in s 113. Although not decisive, a particularly poor compliance history may support the Commissioner declining to make the requested amendment where, in her opinion, making such an amendment would not promote public perception of the integrity of the tax system or voluntary compliance. To decline a s 113 request in this circumstance will be a rare occurrence and will require the approval of a senior officer (see further at [57] and [58] below).

### Section 6A

27. Section 6A (together with s 6) was enacted to provide the framework within which the Commissioner administers the tax system. Section 6A(2) clarifies the Commissioner’s overall objective in carrying out those functions.
28. To discharge her s 6A(2) duties, the Commissioner must compare the available courses of action with the likely effect on the amount of net revenue collected over time. To do this, the Commissioner must consider both the short- and long- term implications of each course of action and have regard to all three factors listed in s 6A(2). These factors are:
- the resources available to the Commissioner (s 6A(2)(a));
  - the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts (s 6A(2)(b)); and
  - the compliance costs incurred by persons (s 6A(2)(c)).
29. The practical effect of these words is that the Commissioner can adopt courses of action that forgo the collection of the highest net revenue:

- in the short term, if it is considered that this will enable the collection of more net revenue in the longer term; and
  - from particular taxpayers, if it is considered that this will enable more net revenue to be collected from all taxpayers.
30. The words “despite anything in the Inland Revenue Acts” in s 6A(2) mean that the Commissioner can carry out the course of action she considers will collect over time the highest net revenue that is practicable within the law, even if it results in less tax being collected than is imposed, or required to be collected, by another provision. However, the words “within the law” in s 6A(2) also mean that the Commissioner must act consistently with the rest of the Inland Revenue Acts.

### **Resources available to the Commissioner**

31. Inland Revenue has limited resources to undertake what sometimes could be lengthy verification processes to determine whether the proposed amendment would result in a correct assessment. While the Commissioner is obligated to collect over time the highest net revenue that is practicable within the law under s 6A(2), the Commissioner must take into account the resources available, the promotion of compliance (especially voluntary compliance) by all taxpayers and any compliance costs incurred by taxpayers.
32. Accordingly, it is consistent with the obligation under s 6A(2) for the Commissioner to limit the amount of time and other resources that will be spent investigating amendment requests. Not all requested amendments will necessarily be made. Ensuring a balance between time spent considering an amendment request and other activities is also consistent with the obligation to protect the integrity of the tax system under s 6.
33. The Commissioner will be reluctant to agree to investigate the correctness of an amendment request that would require the application of disproportionate amounts of Inland Revenue resources (that is, excessive resources when compared to the amount of tax at stake). This is not to say that the Commissioner will only ever use minimal resources to determine the correctness of amendment requests or decline complex amendment requests. The extent and relevance of a taxpayer’s disclosure and the amount of tax involved will potentially indicate the amount of resources required to determine whether an amendment will result in a correct assessment.



## The process used to consider s 113 requests

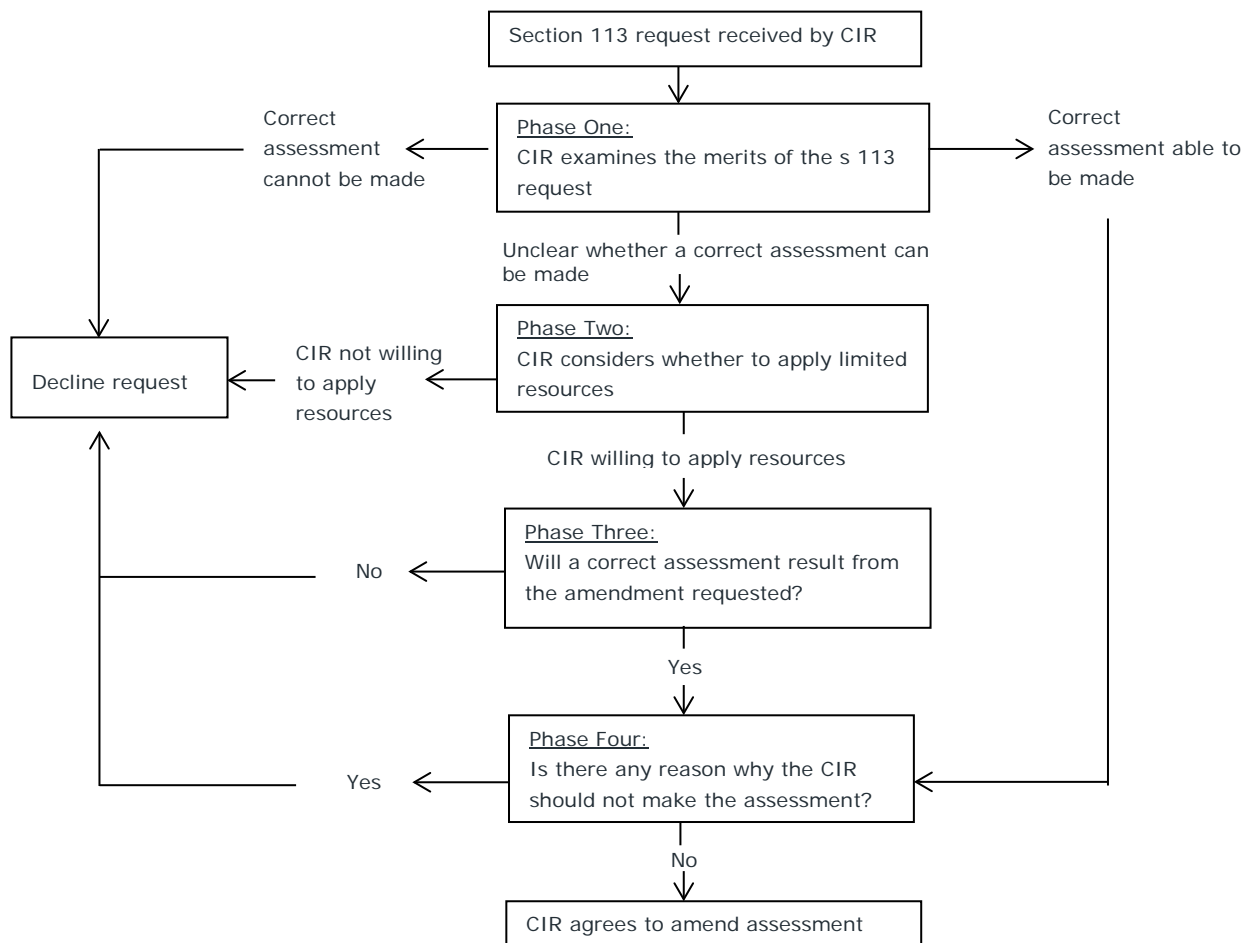
34. As stated in *Westpac Securities NZ Ltd v Commissioner of Inland Revenue*<sup>3</sup> (*Westpac*), "...the focus of the inquiry as to whether the power was available would be centred on whether the amendment the taxpayer seeks to have made will ensure the assessment is correct when amended, even if it was also correct beforehand".
35. Once a taxpayer is able to show that making the requested amendment will result in a correct assessment being made, the next step involves "the Commissioner's decision whether or not to exercise her discretion in a particular case".<sup>4</sup>
36. The Commissioner's process for considering requests under s 113 is carried out under four possible phases:
  - Phase one: An initial examination of the request. If it is clear that an error has occurred and that the error can be easily corrected, then the amendment will be made (subject to the application of phase four). In that case, the request will not have to progress through phases two and three. Conversely, if it is clear that agreeing to the request will not result in a correct assessment, the request will be declined at this point.
  - Phase two: If it is unclear whether agreeing to the request will result in a correct assessment being made, the Commissioner will need to consider whether additional limited resources should be applied to consider the request further.
  - Phase three: In cases where it is decided to apply further resources, the Commissioner will consider whether a correct assessment will result from the requested amendment.
  - Phase four: Determine whether there is any residual reason (other than the Commissioner's limited resources) why the Commissioner should not make the requested amendment.

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<sup>3</sup> *Westpac Securities NZ Ltd v Commissioner of Inland Revenue* [2014] NZHC 3377, (2014) 26 NZTC 121-118 at [65].

<sup>4</sup> *Westpac* at [66].

The following flowchart illustrates the progress of a s 113 request through the four phases:



Each of these phases is summarised below:

## Phase One: Initial examination of request

37. **At this phase, the Commissioner considers the appropriate merits of all s 113 requests.** The Commissioner receives thousands of s 113 requests each year, pointing out errors that have been made by taxpayers or the Commissioner, and requesting that the appropriate assessment be amended. This consideration is based on the facts that are presented by the taxpayer (and those that may already be known to the Commissioner). In the vast majority of these cases the facts are clear that either making the amendment will correct an error and therefore result in a correct assessment or that the amendment will not result in the correct assessment. **The aim of this phase is to act as a “filter” for a clearly correct/incorrect request. Once the Commissioner has considered the merits of the request, the Commissioner will either decline the request or progress it directly to phase four (with the minimum**

**use of the Commissioner's resources possible).** There can be a number of factors that determine whether a request is able to be progressed to phase four (or declined) at this point, for instance:

- If the amendment is being requested to correct an arithmetic, transposition or keying error made by either the taxpayer or Commissioner, the correction will be made without further consideration. See [38].
- Has the taxpayer provided all the required information and has the request been made in the appropriate format? If not, the matter will not proceed unless the necessary information is provided. Note that this factor might also emerge at a later stage, when the Commissioner has begun to examine the question more closely, in which case the matter might not proceed further unless the necessary information can be easily provided by the taxpayer. See further at [66] to [69].
- Is the taxpayer under investigation by Inland Revenue or involved in a dispute with the Commissioner? If so, the request is unlikely to proceed, subject to the outcome of any dispute. See further at [46] and [77] to [80].
- Is the amendment able to be made by the taxpayer in a later period? See further at [88] to [99].
- Is the period that the taxpayer wishes to have amended subject to a statutory time bar? For example, where the Commissioner is unable to refund an amount of tax because the period subject to the amendment request is time barred, resources will not be applied to considering the request for that statute-barred period further. See further at [81] to [86].

## Arithmetic, transposition and keying errors

38. As already stated, if a request is made to correct an arithmetic, transposition or keying error made by either the taxpayer or the Commissioner, the correction will be made without further consideration. The Commissioner has made a decision, based on the care and management principles discussed above, to allocate resources to ensure these previously incorrect assessments are corrected. This is on the basis that the amendment is straight-forward and the amount of resources required is minor.

## Phase Two: Whether the Commissioner will apply resources to consider the request further

39. **Given the correctness of the majority of requests are clear at phase one (see above at [37]), these will not need to be considered at phase two. Those cases that do need to be considered at phase two will be cases where, following the phase one consideration of the merits of the request, it remains uncertain whether acceding to the request will result in a correct assessment. These cases will be more complex. At this second phase, the Commissioner must decide**

**whether to devote her limited resources to resolving a request when the correctness of that request remains uncertain after the initial examination.** In some cases, a balancing of the factors set out below will mean that the Commissioner can simply decide under s 113 to take the matter no further. This is because the courts have recognised that the allocation of resources is a matter for the Commissioner, who is not obligated to allocate resources to determine whether a proposed amendment is correct. Resource consideration commences at this phase and continues throughout the s 113 process.

40. The more easily verifiable the correctness of the proposed amendment is, the more likely it will be that the Commissioner will allocate resources to making the requested amendment. Where the proposed adjustment is merely arguable (or involves disputed facts or statutory interpretation) it is less likely that the Commissioner will devote resources to processing the request further (see further at [43] to [46]).

### **Factors the Commissioner may consider at Phase Two when determining whether to devote resources**

41. In circumstances where the Commissioner is not immediately certain that making the requested amendment will result in a correct assessment, the Commissioner will consider whether the request justifies the commitment of additional resources.
42. When determining whether to apply the s 113 discretion to these more complex cases, the Commissioner will evaluate any amendment request using the care and management principles (discussed at [25] to [33]). These care and management factors (that will be relevant on a case-by-case basis) will each be weighed up in reaching a decision. **This is a balancing exercise where it will be rare for one factor to be determinative.** Even if it is decided to proceed, it may later be necessary to re-evaluate the position if, for example, further information is required or the issue becomes particularly difficult to resolve. The Commissioner may later determine that no further resources will be applied to the request.

### **Primacy of disputes resolution process**

43. Requesting an amendment under s 113 cannot be used to circumvent the statutory disputes procedure<sup>5</sup>. Further, the Commissioner does not consider it appropriate to use s 113 to amend assessments when the facts of a case or the interpretation of the law relevant to those facts is at issue. Disputed facts and statutory interpretation, or

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<sup>5</sup> *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, (2011) 25 NZTC 20-103.

instances where the facts or law is unclear, should properly be considered using the disputes resolution process.

44. The Commissioner will consider whether a taxpayer was aware that they had the disputes resolution procedure available to them. A taxpayer who knowingly does not engage with the disputes process within the available time period, and then attempts to use s 113 to challenge an assessment outside the disputes process timeframe is something that the Commissioner will take into account in deciding whether to accept or decline a request.<sup>6</sup>
45. To accede to a taxpayer's amendment request in these circumstances would potentially mean treating that taxpayer more advantageously than other taxpayers who have appropriately followed the disputes process regime. Section 6(2)(c) requires that the Commissioner protect the rights of taxpayers to have their tax affairs *treated with no greater or lesser favour than the tax affairs of other persons*. As Wylie J observed in *Arai Korp* (at [68]); "A taxpayer who has sat on his or her hands and done nothing, is not entitled to expect preferential treatment".
46. As stated previously (at [37]) the Commissioner will not amend assessments while any item of those assessments remains the subject of a current dispute under Part 4A of the TAA. If the period and tax type relating to an amendment request is already under investigation, the Commissioner will make any appropriate consequential amendments at the conclusion of the investigation, or if the result of the investigation is disputed, at the conclusion of the dispute. That is, if the Commissioner is already devoting resources to verify the correctness of an assessment, all reasonable consequential effects of the investigation (including the amendment request) will be considered as part of that process. See [77] to [80] for further discussion.

### **Whether the subject matter of the request could apply to other taxpayers**

47. The focus of this factor is on whether the request could also have application for other taxpayers and, if so, the extent to which this would impact on the Commissioner's resources. Commonly, in such cases, it will make sense for the matter to be considered further in order for the Commissioner to clarify the position for all taxpayers potentially affected. The more significant the precedential value, the more likely it is that resources will be applied.

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<sup>6</sup> *Arai Korp Limited v Commissioner of Inland Revenue* [2013] NZHC 958, (2013) 26 NZTC 21,014.

### How similar requests have been treated by the Commissioner

48. Similarly, if the Commissioner has agreed to amendments that involve the same facts and legal analysis, then this would be a factor that would generally support exercising the discretion. However, if an assessment was previously amended under s 113 but that assessment was made on what the Commissioner now considers to be an incorrect basis, then that would not provide authority for treating similar requests in the same manner.

### Whether the request is a voluntary disclosure

49. The Commissioner will, as a matter of practice, always apply resources to considering a s 113 request that amounts to a voluntary disclosure (in that the request discloses a tax shortfall). This is on the basis that resources need to be applied to considering whether the disclosure is full and complete and whether a shortfall penalty should be imposed in accordance with the process set out in SPS 19/02 *Voluntary disclosures*. Therefore, the Commissioner is not applying any additional resources in considering the s 113 request. See further at [73] to [75].

### Whether the taxpayer took their original position relying on advice from the Commissioner

50. As a matter of practice, the Commissioner will generally apply public statements. However, the Commissioner is not legally bound by such statements or other advice (unless the statements are binding rulings that apply to the particular taxpayer and arrangement).<sup>7</sup>
51. From time to time, the Commissioner will take the view that advice that has previously been given is incorrect. This may occur, for example, where the court clarifies the law or the Commissioner takes a different view of the law.
52. Where the Commissioner has given incorrect advice (other than a binding ruling) this does not operate to change the amount of tax legally payable on the basis of the correct application of the law (because the Commissioner cannot simply choose to alter the statutory basis of an assessment<sup>8</sup>). However, it may mean that an assessment previously made on the basis of that advice is now incorrect. Accordingly, that assessment may be corrected by the Commissioner following the application of the

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<sup>7</sup> *Commissioner of Inland Revenue v Ti Toki Cabarets (1989) Ltd* (2000) 19 NZTC 15,874 (CA); *Lemington Holdings Ltd (No 2) v Commissioner of Inland Revenue* (1983) 6 NZTC 61,576 (HC); *Westpac Banking Corporation v Commissioner of Inland Revenue* (2008) 23 NZTC 21,694 (HC).

<sup>8</sup> *Vestey v IRC* (1979) 3 All ER 976 (HL); *R v IRC, ex p Wilkinson* [2006] 1 All ER 529 (HL).

principles set out in this Statement. For example, the assessment may be corrected provided it is possible to establish the correct position without undue application of the Commissioner's resources.

53. The Commissioner's statement: *Status of the Commissioner's advice*<sup>9</sup> fully sets out the status of advice that is given by the Commissioner. It discusses the circumstances in which a change of view will be applied retrospectively and may therefore result in the approval of a request to amend existing assessments made in reliance on the former view of the Commissioner.

### **Whether there has been a delay in making the request**

54. This factor relates to the length of time since the original position was first taken, when the taxpayer became aware of the issue, or between the taxpayer becoming aware of the issue and the s 113 request being made.
55. When a substantial amount of time has passed between the events relevant to the proposed amendment and the request, it may be difficult for the Commissioner to ascertain and/or verify the relevant facts.

### **The size of the proposed amendment**

56. If the size of the amendment is large in absolute terms or material for the taxpayer, this may support the Commissioner devoting resources to determine the correctness of the requested amendment. Conversely, very small amounts may not justify the allocation of resources when the care and management factors are viewed as a whole (unless the Commissioner considers that the matter is very straightforward). However, this factor should never be decisive.

### **Taxpayer's compliance history**

57. The Commissioner may take a taxpayer's compliance history into consideration when deciding whether to apply resources to an amendment request. Although rarely decisive, a particularly poor compliance history may support a decision not to devote resources to consider the correctness of the requested amendment.<sup>10</sup> This may occur, for instance, when a taxpayer's compliance history means the Commissioner is unable

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<sup>9</sup> More information on this statement may be found <https://www.taxtechnical.ird.govt.nz/> (search keywords: status of Commissioner's advice).

<sup>10</sup> *Arai Korp: Charter Holdings Ltd v Commissioner of Inland Revenue (No 2)* [2015] NZHC 2041, (2015) 27 NZTC 22-022.

to accept the evidence for the requested amendment at face value and considers that further investigation is required.

58. Agreeing to the requested amendment in this circumstance, without further investigation, could be seen as undermining public perception of the integrity of the tax system and voluntary compliance.

### **Any other considerations relevant to the particular case**

59. Recognising the broad discretionary power contained in s 113, the above list of factors is intended to be comprehensive, but not exhaustive. There may be other considerations arising out of a particular case that are relevant in determining what impact the proposed course of action for that particular case would have on voluntary compliance and on the integrity of the tax system, including public perception of that integrity.

## **Phase Three: Whether a correct assessment will result from the requested amendment**

60. Where it is decided to apply additional resources to consider the requested amendment (which will most often be the case), the Commissioner will then consider the merits of the request and proceed accordingly. This may require the taxpayer to provide further information and/or additional legal analysis. It is noted that this step may take some time. The position requested must be consistent with the Commissioner's view of the law on the facts available. If, after examining the request, the Commissioner concludes that a correct assessment can be made, the request will be progressed to phase four. However, if the requested position is contrary to the Commissioner's view of the law, or the Commissioner remains uncertain that a correct assessment can be made, the request will be declined. In addition, if the commitment of resources proves to be much greater than anticipated in the context of the matters raised during this phase, the request will revert to phase two and the issue of the Commissioner's resources will be reconsidered.

## **Phase Four: Final considerations: Whether the discretion will always be exercised**

61. When the Commissioner is satisfied the amendment requested will lead to the making of a correct assessment, that assessment will be made unless circumstance exists that suggests that, on balance, the integrity of the tax system will be undermined by the making of that assessment. These circumstances can include, for example:
  - (a) Where the request is, or is part of, a tax avoidance arrangement.



This is because, while the requested adjustment may be a correct interpretation of the law when considered in isolation, the Commissioner would not be convinced that the resulting assessment would be correct if s BG 1 was applied. The Commissioner's view of the law on tax avoidance is set out in Interpretation Statement *IS 13/01 – Tax avoidance and the interpretation of sections BG 1 and GA 1 of the Income Tax Act 2007*.

- (b) Where a taxpayer requests the Commissioner to amend an assessment from one correct tax position to another position that is also correct.

When a taxpayer requests the Commissioner amend an assessment from one correct tax position to another tax position that is also correct, the fact the original position was correct is a factor the Commissioner may take into account in deciding whether to exercise the discretion in s 113. As stated by Clifford J in *Westpac* at [67]:

There could be any number of valid reasons why the Commissioner may decline to exercise her discretion in situations of regretted correct tax positions including where the taxpayer appears to be gaming the system. ...The fact that Westpac, a well-resourced, sophisticated and well-advised taxpayer says that it "erred" when the relevant offset elections were made may be a proposition that the Commissioner will need to consider carefully when deciding whether or not to exercise her discretion.

Two matters flow from these judicial comments. Firstly, whether a taxpayer erred in taking their original tax position is a factor the Commissioner may take into account in deciding whether to make the requested adjustment. A taxpayer could be said to have "erred" where they:

- (1) did not take the tax position they intended, through mistake or oversight, or
- (2) the tax position they took, though technically possible and therefore already correct, was not one they would have taken if they had been in possession of all the relevant facts at the time that the original tax position was taken.

If the request arises from such a mistake or oversight, it is more likely the amendment will be made than if the request is simply the result of the taxpayer changing their mind. This is because the TAA places an obligation on taxpayers to make correct assessments and it is not contemplated that unlimited additional variations can be made at a cost to the Commissioner. Amendments should not be able to be made merely at will. On this basis, it is unlikely that the Commissioner will agree to on-going requests for changes to tax positions.

The Commissioner may also take into account the fact a taxpayer is "well resourced, sophisticated and well advised" (per Clifford J) and therefore generally better equipped to be able to provide evidence that they erred in taking their original position.

62. To allow an amendment in these circumstances may have a negative impact on public perceptions of the integrity of the tax system, especially as they relate to the concepts of statutory timeframes,<sup>11</sup> certainty, and their own future voluntary compliance. In these instances, the decision not to apply the discretion will be made by a senior Inland Revenue officer, after advice from the Legal Services group.

## How does a taxpayer make a request to amend their assessment?

### Mode of request

63. A request to correct clear errors, such as arithmetic, transposition and keying errors may be made by telephone or in writing. For the purposes of this Statement the term “in writing” includes a taxpayer modifying their existing tax return by using myIR, as well as other communications with the Commissioner by electronic means.
64. A request to make adjustments other than for these errors must be made as follows:
- Requests to amend returns where the tax effect of the amendment requested is \$10,000 or less may be made by telephone or in writing. However, where the request is made by telephone, Inland Revenue may ask that the request be put in writing, especially where, for example, there are consequential adjustments that may need to be made to other returns or taxpayers.
  - Requests to amend returns where the tax effect of the amendment requested is greater than \$10,000 must be made in writing.
65. To ensure there is a record of the amendment request made by a taxpayer, other than a request to adjust for a clear error (as provided in [63]) the ability to accept an amendment request by telephone is limited to calls that are received by Inland Revenue at a site that has call recording. That can be achieved by calling one of Inland Revenue’s 0800 numbers. Where a call is received by a site that does not have call recording, the taxpayer may be asked to put their request in writing.

### Information required with request

66. The onus is on the taxpayer (or their agent) making amendment requests under s 113 to supply the Commissioner with all relevant information to substantiate the merits of the amendment requested. This information will enable the Commissioner to consider

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<sup>11</sup> *Wilson; Charter Holdings Ltd.*

the merits of the amendment request and verify that the amendment will lead to a correct assessment. Providing all relevant information at this early stage will help to have the request dealt with in the truncated phase one/phase four process (see further at [37]).

67. Information supplied with the s 113 request should include the following (as relevant):

- the tax types and periods containing the tax position that the taxpayer wishes to amend;
- the decrease in tax liability<sup>12</sup> that will result from any amendment;
- a description of the original tax position, including the background circumstances and the reasons the original tax position was taken;
- the nature of the amendment, including any relevant tax laws;
- how and why the need for the amendment was identified;
- details of any incorrect advice given directly to the taxpayer by Inland Revenue and how the taxpayer relied on that advice;
- the action required to ensure correctness;
- all relevant documents and records or other information supporting the amendment request;
- whether the taxpayer is aware of any relevant view published by the Commissioner and the extent to which the taxpayer's amended tax position is consistent with that published view.

Where an amendment request is made by a taxpayer to modify an existing return using myIR, much of the above information will be supplied while undertaking that modification. The additional information that is required can be provided by the taxpayer in the space that provides for the "description" of the "amendment information".

68. If insufficient information is provided to enable the Commissioner to confirm that a correct assessment will result from the requested amendment, the request may be declined, or the taxpayer will be asked to supply the required information (if this is known). Where a request is declined because of insufficient information, the taxpayer is able to reapply once the requisite information is obtained.

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<sup>12</sup> An amendment request that results in an increase in the tax payable is a voluntary disclosure and will be dealt with by following the process set out in SPS 19/02 *Voluntary disclosures*. See [73] to [75] below

69. As already stated, whether the Commissioner will devote resources to determine the correctness of the amendment requested is something that will continue to be considered throughout the verification process, using care and management principles. The Commissioner must make appropriate resourcing decisions using these principles, regardless of the effort and resources committed by the taxpayer.

## **Amending assessments**

### **Advice to taxpayers**

70. Where the decision is made to decline to amend the assessment, the Commissioner will advise the taxpayer or their agent of the decision and the reasons the request was declined. Where the request has been made by telephone, the decision to decline and the reasons for declining the request may be given during the telephone call. If a final decision cannot be given at the time the telephone call is received, the final decision (to decline the request, together with the reasons for declining) may be given either by a telephone call or in writing to the taxpayer (or their agent).

### **Consequential adjustments**

71. When amending an assessment, the Commissioner will ensure that all consequential adjustments to other tax types and/or periods (including other taxpayer's assessments) are made once they are confirmed by the affected taxpayers. That may mean that in some cases the Commissioner will require further information before making such consequential amendments.

### **Fresh or increased liability**

72. Under s 113(2), if any amended assessment imposes a fresh or increased liability, the Commissioner will give notice to the taxpayer.

## **Voluntary disclosures**

73. For the purposes of this statement, a "voluntary disclosure" is defined as any amendment request that, if accepted by the Commissioner, would result in an increase in the tax payable by a taxpayer or a decrease in the amount of any loss available to be utilised by the taxpayer.

74. Where a taxpayer makes an amendment request that is a voluntary disclosure, that disclosure must follow the process outlined in SPS 19/02 *Voluntary disclosures*<sup>13</sup> or any statement issued in replacement. Further information on the voluntary disclosure process may also be found in Parts 3 and 4 of the Guide: IR280 *Putting your tax returns right*.<sup>14</sup>
75. Once a taxpayer's voluntary disclosure has been accepted as being valid by the Commissioner, s 113 provides the legislative authority for effecting the reassessment. Generally, a similar approach to that outlined in this statement will apply, except that the Commissioner will always commit resources to the request (see [49]).

## Shortfall penalties

76. Where an amendment request that constitutes a voluntary disclosure imposes a fresh liability or increases an existing liability, the taxpayer may also be liable to a shortfall penalty. Whether a shortfall penalty will be imposed and whether the penalty will be reduced to take account of the voluntary disclosure are matters that will be considered as part of the voluntary disclosure process. This is discussed further in SPS 19/02 *Voluntary disclosures*.

## Related matters

### Investigations

77. Inland Revenue undertakes various types of investigation (or auditing) activities. For the purposes of this Statement, an investigation means any examination of a taxpayer's financial affairs to verify that they have paid the correct amount of tax and complied with their tax obligations.
78. As previously stated (at [48]), irrespective of whether there is a current dispute, if the period and tax type relating to an amendment request is already under investigation, the Commissioner will make any appropriate consequential amendments.
79. The Commissioner may make any consequential adjustments (that is, adjustments not requested by the taxpayer under investigation) to the taxpayer's other assessments or to other taxpayers affected by adjustments resulting from the investigation. The consequential adjustments could relate to the same or different tax types.

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<sup>13</sup> More information on this statement may be found at <https://www.taxtechnical.ird.govt.nz/> (search keywords: SPS 19/02).

<sup>14</sup> More information on this guide may be found at [www.ird.govt.nz](http://www.ird.govt.nz) (search keyword: IR280).

80. If the Commissioner agrees with the amendment request, then (subject to the limitations set out below) the amendments will be incorporated into the amended assessment arising from the investigation. The Commissioner cannot amend an assessment (to reflect an amendment request) before finalising the position for the other issues arising from the investigation that affect the assessment; the Commissioner cannot issue a partial assessment. The amendments requested under s 113 will be treated in the same way as any other agreed adjustments arising out of the investigation.

### **Time limits on increasing assessments**

81. Generally, the Commissioner cannot increase an amount previously assessed (or decrease the amount of a net loss) after the expiration of four years from the end of the tax year in which the income tax returns were provided (ss 108 and 108A).
82. As stated at [73], for the purposes of this Statement, a “voluntary disclosure” is defined as any amendment request that, if accepted by the Commissioner, would result in an increase in the tax payable by a taxpayer or a decrease in the amount of any loss available to be utilised by the taxpayer. Given this, whether the period subject to the voluntary disclosure is time barred is a matter that will be considered as part of that process.

### **Time limits on tax refunds**

83. Before the Commissioner is able to refund an amount of overpaid tax, the s 113 discretion must first be exercised. As already stated, where the Commissioner is unable to refund an amount of tax because the period subject to the amendment request is time barred, resources will not be applied to considering the request for that time barred period. Generally, the Commissioner is unable to refund an amount of overpaid tax where the 4-year period in s 108 has expired. For all taxes (other than GST) this rule, together with a number of exceptions to it, is set out in Subpart RM of the Income Tax Act 2007.

### **Time limits on GST refunds**

84. As with the refund of other taxes, before the Commissioner will make a refund of overpaid GST, the Commissioner must first decide whether to exercise the s 113 discretion. Where it is decided to apply resources, the general rule is that the Commissioner cannot refund an amount of overpaid GST after the expiry of the 4-year period in s 108A. The exceptions to this general rule are set out in s 45 of the GST Act. If the Commissioner is unable to refund an amount of tax because the period subject to the amendment request is time barred, resources will not be applied to considering the request for that time barred period.

## Amended assessments after expiry of the 4-year time limit for increasing assessments

85. As noted above, in some instances there are exceptions to the general 4-year time limit for the Commissioner either to increase an amount assessed or make a refund. When a taxpayer requests a refund after the 4-year limitation period, the Commissioner will also incorporate any debit adjustments that would have been made but for the application of the 4-year time limit in any consideration. This will ensure the correctness of the assessment.
86. Given that (generally) the Commissioner cannot increase an assessment outside the 4-year limitation period, if the amount of any required debit adjustment exceeds the refund requested by the taxpayer, the amendment will not be made.

## Default assessments

87. If the Commissioner has made assessments under s 106 (commonly known as default assessments) and the taxpayer subsequently files tax returns for the relevant periods outside the disputes resolution response periods, the Commissioner will treat the tax returns as requests under s 113. The Commissioner will generally amend the assessments under s 113 after confirming that the tax returns contain correct tax positions. In addition, if the taxpayer is within the relevant disputes resolution response periods, they should consider issuing NOPAs under s 89D(1) along with their tax returns to preserve their dispute rights in circumstances where the Commissioner declines to exercise the discretion in s 113.

## The relationship between s 113 and s 113A

88. Under s 113, errors are generally required to be corrected in the return period in which they arose. However, s 113A allows taxpayers to correct some errors made in income tax, FBT or GST returns "in the next return that is due after the discovery of the error". See [91] for further discussion on how the Commissioner interprets this phrase.
89. The legislation is clear that s 113A only applies to allow a taxpayer to make an adjustment in their next return. Although s 113A is not available to the Commissioner as a means of amending a taxpayer's return, a taxpayer may request that they make the adjustment themselves (using s 113A) rather than the Commissioner making any adjustment under s 113. However, when the Commissioner determines it is more appropriate to amend the assessment using s 113, she cannot be prevented from doing so merely because the taxpayer may prefer to use s 113A to make the adjustment in their next return.
90. Section 113A may only apply where the taxpayer has provided a tax return (in which the assessment of their liability contained one or more errors) and the taxpayer (or their agent) has subsequently identified an error, which, for a single return:

- The total discrepancy in the assessment caused by all errors is tax in the amount of \$1,000<sup>15</sup> or less. When calculating the \$1,000<sup>16</sup> discrepancy, income tax, FBT and GST returns are considered separately; or
  - The total tax discrepancy in the assessment caused by all errors is equal to or less than the lesser of:
    - \$10,000; and
    - 2% of the taxpayer's annual gross income or output tax as applicable.<sup>17</sup>
91. The Commissioner accepts that it may take a taxpayer some time to confirm that an error has occurred and the extent of that error. This being so, the phrase "the next return that is due after the discovery of that error" (see [88]) means the next return after the taxpayer has completed all the enquiries necessary to confirm the quantum and extent of the error and the reason that the error occurred.
92. An adjustment made under s 113 corrects the return in which the error appeared (the initial return), albeit that the error is physically corrected in a subsequent return. As the initial return is treated as having been corrected it cannot be subsequently amended by the Commissioner in respect of that same error using s 113.
93. While the Commissioner is not prevented from exercising the discretion under s 113 where the taxpayer is able to make the required correction themselves in a later period, the Commissioner's practice is generally not to expend resources in these circumstances. This is because s 113A provides a specific mechanism by which the taxpayer is able to correct the error themselves. As such, the taxpayer does not need to request that the Commissioner amend an assessment under s 113 to make the correction.
94. Notwithstanding this, in certain circumstances the Commissioner will exercise the discretion under s 113, even where the taxpayer is entitled to make the required corrections using s 113A (per [89]). This will generally be when the taxpayer is either unable to make a subsequent adjustment or using s 113A to make that subsequent adjustment is not in the taxpayer's best interests. For example:

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<sup>15</sup> Previously \$500. Amended by s 112 of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017, with effect from 1 April 2017.

<sup>16</sup> Above n 15.

<sup>17</sup> Inserted by s 76 of the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Act 2019, with effect from the date of Royal assent; 18 March 2019.



- Where the error has occurred in a taxpayer's final return for that revenue type and therefore there is no future return in which to make an adjustment under s 113A;
  - Where not correcting the error in the earlier period using s 113 will negatively impact an entitlement of the taxpayer. For example, where making the amendment under s 113 will increase the taxpayer's family tax credit entitlement from that earlier date.
95. Taxpayers are not required to notify the Commissioner of any correction made using s 113A. However, Inland Revenue may review these adjustments as part of its investigation activity to ensure that the adjustments were correctly made. Inland Revenue expects taxpayers to maintain sufficient records to substantiate any adjustments made and explain why the errors arose in the first place. The usual time bar rules apply to adjustments made under s 113A as apply to s 113. See [81] to [86] for further discussion.
96. Further information regarding the application of s 113A may be found in *Tax Information Bulletin* Vol 31, No 4 (May 2019), at pages 64 – 66, and *Tax Information Bulletin* Vol 32, No 4 (May 2020) at pages 69 – 72.

## **The relationship between ss 113, 113A and the proviso to s 20(3) of the GST Act**

97. When a registered person has not claimed a GST input tax deduction in an earlier taxable period then the proviso to s 20(3) of the GST Act allows the person to claim that deduction in a later period. As discussed above (at [88]), a registered person is also able to use a future return to correct some errors (including input tax deduction errors) by using the provisions of s 113A. This contrasts with the treatment of the same error(s) under s 113, which would be to correct the earlier GST return to which the input tax deduction related.
98. It is the Commissioner's view that where a registered person is seeking to correct input tax deductions that meet the thresholds set out in s 113A, that provision should be used. Any errors in input tax deduction errors that do not meet the threshold tests are more appropriately corrected under the proviso to s 20(3) of the GST Act. Notwithstanding this however, the Commissioner acknowledges that the use of either provision is discretionary and a registered person *may* use either s 113A or s 20(3) of the GST Act to correct an input tax deduction error. Accordingly, despite the Commissioner's view on the appropriate approach, the Commissioner accepts that either provision may be used to correct these GST errors in a subsequent return (subject to the threshold tests).
99. While the Commissioner is not prevented from exercising the discretion under s 113, the presence of the specific provision in s 20(3) of the GST Act for this type of GST error means that the Commissioner's practice is generally not to exercise the discretion

in these circumstances. Because s 20(3) of the GST Act provides taxpayers with a specific mechanism to correct a GST input tax deduction error, the Commissioner's view is that a general provision such as s 113 should not be used. For further guidance see QB 09/04 *The relationship between section 113 of the TAA and the proviso to section 20(3) of the GST Act when a registered person has not claimed an input tax deduction in an earlier taxable period*.<sup>18</sup> This outcome is considered to be more consistent with the scheme of the legislation and in particular s 15B of the TAA, which requires taxpayers correctly determine the amount of tax payable (and make an assessment).

## The relationship between s 113 and s 22G of the TAA

100. The Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Act 2019 introduced changes that simplified individuals' year-end filing obligations and introduced a simplified method for correcting errors in some circumstances, without going through the formal disputes resolution process.

### Correcting pre- and post-assessment errors for qualifying individuals before their terminal tax due date

101. Section 22D(2) introduced a number of terms. The term "qualifying individual" means an individual who only earns "reportable income" for an income year and has no other income information that must be provided to Inland Revenue. "Reportable income" is defined in s 22D(3) and means income that Inland Revenue receives regular information about, typically from third parties (such as employers) during the income year or by 31 May following the end of the income year. This includes PAYE income payments, along with resident and non-resident passive income (where the third parties have the recipient's tax file number).
102. Section 22G(2) provides that a qualifying individual (or an individual who has been treated as a qualifying individual) may amend the income information in their pre-populated account prior to an assessment. Section 22G(5) also allows the Commissioner to amend incorrect pre-assessment income information.
103. Once the Commissioner is satisfied that the income information is correctly and completely recorded, the Commissioner will finalise the taxpayer's account for the tax year.<sup>19</sup> By virtue of s 22I, when the account is finalised the taxpayer is treated as having

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<sup>18</sup> More information on this statement may be found at <https://www.taxtechnical.ird.govt.nz/> (search keywords: QB 09/04).

<sup>19</sup> Section 22H.

made a return of income that is a statement of the taxpayer's tax position and an assessment under s 92 in relation to the return.

104. Section 22G(3) provides that a qualifying individual may also amend the income information in their finalised account at any time before their terminal tax date for the tax year. Where the taxpayer's final account is amended under s 22G(3), the amended information forms a new assessment and any earlier assessment for the tax year is regarded as not having been made. Because there is no prior assessment, s 113 is not engaged. This new process does not amend an assessment. It creates a new original assessment instead.
105. This means that when a taxpayer who is a qualifying individual (or is mistakenly treated as such), amends their final assessment under s 22G(3) prior to their terminal tax date, they will not be subject to penalties or interest (unless they are subject to the provisional tax regime).
106. Notwithstanding a taxpayer's ability under s 22G(3) to correct their final account income information, s 22G(4) clarifies that if the Commissioner has reason to believe the amended income information is incorrect, the Commissioner can decide not to accept the taxpayer's amendment and make a default assessment under s 106. This process protects the integrity of the tax system by ensuring that the Commissioner's assessment is not immediately displaced with an incorrect assessment. Rather, disputed amendments of this nature are processed under the existing disputes rules.

### **Correction of post-assessment errors by the Commissioner for qualifying individuals**

107. Section 22G(6) provides that the Commissioner may amend income information in a qualifying individual's final account for the tax year to correct errors in the information provided to a taxpayer at any time before the end of the time bar period in s 108(1), by notifying the individual of the amendment. This means that the Commissioner can correct the final accounts without first issuing a NOPA. Section 22G(6) is limited to qualifying individuals because it reflects the way in which qualifying individual's assessments are finalised by the Commissioner. It does not apply to instances where the Commissioner disagrees with an adjustment proposed by a taxpayer (see [105] for this discussion).

### **Later requests for changes by qualifying individuals**

108. When an individual wishes to amend the income information in their final account after their terminal tax date, s 22G(8) provides that the individual may make a request to the Commissioner to amend their final account under s 113.

## Correction of post-assessment errors of “other income” earners

109. “Other income earners” are those taxpayers that have income other than reportable income, that must be provided to Inland Revenue. An individual who is an “other income earner” and has finalised their account (per s 22H(2)) but wishes to amend their assessment after the account has been finalised, must either request an amendment from the Commissioner under s 113, or they may choose to issue a NOPA if they are still within the applicable response period (s 22G(8)). Similarly, when the Commissioner wishes to make an adjustment in relation to an individual, other than a qualifying individual, s 22G(7) requires the Commissioner to first issue a NOPA under s 89B.

### Other matters

110. It is noted that the use of s 22G is discretionary: a taxpayer *may* use the section to amend income information. Given this, the Commissioner accepts that, provided the adjustment meets the threshold tests, taxpayers may use s 113A to correct errors in a subsequent return.
111. As stated previously (at [103]) once the Commissioner is satisfied that the income information is correctly and completely recorded, the Commissioner will finalise the taxpayer’s account for the tax year.<sup>20</sup> When the account is finalised, s 22I provides that the taxpayer is treated as having made a return of income, that is a statement of the taxpayer’s tax position, and an assessment under s 92 in relation to the return. Having taken a tax position, the shortfall penalty provision may have application to any incorrect tax positions taken by a taxpayer.
112. Further information regarding the application of s 22G may be found in *Tax Information Bulletin* Vol 312, No 4 (May 2019) at pages 6-15.

## Challenge rights

113. A taxpayer cannot challenge the exercise of the Commissioner’s discretion (or a decision not to exercise this discretion) under s 113 by commencing proceedings in a hearing authority.<sup>21</sup> However, any decision under s 113 may be subject to judicial review.

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<sup>20</sup> Section 22H.

<sup>21</sup> Section 138E(1)(e)(iv).

## Reconsideration and complaint rights

114. If a taxpayer is concerned that their circumstances have not been given proper consideration, they should raise their concern with the staff member that considered their request and ask for the decision to be reviewed by a more senior officer.
115. If a taxpayer is still not satisfied with the level of service they receive, they can obtain more information about the Inland Revenue complaints management service at <https://www.ird.govt.nz/contactus/complaints-disputes-compliments/complaints> or phone 0800 274 138 (Monday to Friday, between 8am and 5pm).

This Standard Practice Statement is signed on 29 May 2020.

**Natasha Delamore**

Group Lead, Technical Standards, Legal Services

## References

### Legislative References

Of particular relevance to the Commissioner when considering requests to amend assessments are the following sections of the TAA:

#### **Section 6: Responsibility of Ministers and officials to protect integrity of tax system**

*Best endeavours to protect integrity of tax system*

- (1) Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of tax and for the other functions under the Inland Revenue Acts must at all times use their best endeavours to protect the integrity of the tax system.

*Meaning of integrity of tax system*

- (2) Without limiting its meaning, the **integrity of the tax system** includes-
  - (a) the public perception of that integrity; and
  - (b) the rights of persons to have their liability determined fairly, impartially, and according to law; and
  - (c) the rights of persons to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other persons; and
  - (d) the responsibilities of persons to comply with the law; and
  - (e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of persons; and
  - (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.

#### **Section 6A: Commissioner of Inland Revenue**

*Care and management*

- (1) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.

*Highest net revenue practicable within the law*

- (2) In collecting the taxes committed to the Commissioner's charge, and notwithstanding anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—
  - (a) the resources available to the Commissioner; and

- (b) the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts; and
- (c) the compliance costs incurred by persons.

### **Section 15B: Taxpayer's tax obligations**

A taxpayer must do the following:

- (aa) if required under a tax law, make an assessment:
  - (a) unless the taxpayer is a non-filing taxpayer, correctly determine the amount of tax payable by the taxpayer under the tax laws:
  - (b) deduct or withhold the correct amounts of tax from payments or receipts of the taxpayer when required to do so by the tax laws:
  - (c) pay tax on time:
  - (d) keep all necessary information (including books and records) and maintain all necessary accounts or balances required under the tax laws:
  - (e) disclose to the Commissioner in a timely and useful way all information (including books and records) that the tax laws require the taxpayer to disclose:
  - (f) to the extent required by the Inland Revenue Acts, co-operate with the Commissioner in a way that assists the exercise of the Commissioner's powers under the tax laws:
  - (g) comply with all the other obligations imposed on the taxpayer by the tax laws:
  - (h) if a natural person to whom section 80C applies, inform the Commissioner that the person has not received an income statement for a tax year, if the income statement is not received by the date prescribed in section 80C(2) or (3):
  - (i) if the taxpayer is a natural person, correctly respond to any income statement issued to the taxpayer.

### **Section 22G: Amending accounts for incorrect or missing information**

- (1) **WHEN THIS SECTION APPLIES** This section applies for an individual and a tax year when incorrect information relating to the individual has been provided to the Commissioner, or information relating to the individual is missing.
- (2) **CORRECTION OF PRE-ASSESSMENT ERRORS BY INDIVIDUALS** An individual may amend income information in their pre-populated account at any time before the account is finalised under section 22H.
- (3) **CORRECTION OF POST-ASSESSMENT ERRORS BY QUALIFYING INDIVIDUALS** Despite subsection (2), a qualifying individual, or an individual who is treated as a qualifying individual, may amend the income information in their final account at any time before their terminal tax date for the tax year. Any earlier assessment for the tax year is regarded as not having been made.

- (4) **WHEN AMENDED INFORMATION INCORRECT** Subsection (3) does not apply if the Commissioner has reason to believe that the amended information is incorrect. The Commissioner may decide not to accept all the information as correct and provide an assessment for the individual under section 106.
- (5) **CORRECTION OF PRE-ASSESSMENT ERRORS BY COMMISSIONER** The Commissioner may amend information in the individual's pre-populated account for the tax year to correct errors in the information. The Commissioner must notify the individual of the amendment.
- (6) **CORRECTION OF POST-ASSESSMENT ERRORS BY COMMISSIONER: QUALIFYING INDIVIDUALS** The Commissioner may amend information in a qualifying individual's final account for the tax year to correct errors in the information at any time before the end of the period referred to in section 108(1), notifying the individual of the amendment.
- (7) **CORRECTION OF POST ASSESSMENT ERRORS BY COMMISSIONER: OTHER INDIVIDUALS** If the Commissioner wishes to make an adjustment in relation to the information of an individual other than a qualifying individual, the Commissioner must issue a notice of proposed adjustment under section 89B subject to the exceptions set out in section 89C.
- (8) **LATER REQUESTS FOR CHANGES BY INDIVIDUALS** After the terminal tax date, an individual may ask the Commissioner to amend information in their final account for the tax year under section 113.

### **Section 113: Commissioner may at any time amend assessments**

- (1) Subject to sections 89N and 113D, the Commissioner may from time to time, and at any time, amend an assessment as the Commissioner thinks necessary in order to ensure its correctness, notwithstanding that tax already assessed may have been paid.
- (2) If any such amendment has the effect of imposing any fresh liability or increasing any existing liability, notice of it shall be given by the Commissioner to the taxpayer affected.

### **Section 113A: Correction of certain errors in subsequent returns**

- (1) This section applies for the purposes of this Act and the Goods and Services Tax Act 1985 when-
  - (a) A person-
    - (i) has made an assessment of income tax or goods and services tax in a return that results in a tax liability for the person; or
    - (ii) has provided a return that results in a liability for fringe benefit tax for the person; and



- (b) 1 or more errors in the assessment or return, as applicable, cause a tax discrepancy in the amount of the liability.
- (2) This section does not apply in relation to an assessment or return for an ancillary tax other than fringe benefit tax as described in subsection (1)(a)(ii).
- (3) If the total tax discrepancy amounts to \$1,000 or less, the person may make correction in the next return that is due after the discovery of the error or errors.
- (3B) If the total tax discrepancy is caused by an error or errors that, for the person, is not a material error or are not material errors, the person may make a correction in the next return that is due after the discovery of the error or errors.
- (4) For the purposes of subsection (3B) and in relation to a single return of a person, an error is not material if the amount of the total tax discrepancy caused by the error or errors in the assessment is equal to or less than the lower of-
- (a) \$10,000; and
- (b) 2% of the person's annual gross income or output tax, as applicable.
- (5) Subsection (3) and (3B) do not apply to a person who applies the materiality threshold in subsection (4) in relation to an assessment of their liability for income tax or goods and services tax or return for fringe benefit tax if their main purpose in applying the threshold is to delay the payment of tax.

### **Other relevant legislative provisions are:**

- Sections 78B, 89C, 89D, 89N, 106(1), 107A, 108, 108A, 113A, 113D, 138E, 141FB, and 141G of the TAA.
- Subpart RM 2 of the Income Tax Act 2007.
- Sections 19C(8), 20, 45 and 46 of the GST Act.
- Section 202 of the Student Loan Scheme Act 2011.

### **Published statements**

This Statement should be read in conjunction with the following statements published by the Commissioner and any issued in replacement:

- SPS 19/02 *Voluntary Disclosures* and SPS 06/03 *Reduction of shortfall penalties for previous behaviour*.
- IS 10/07 *Care and Management of the taxes covered by the Inland Revenue Acts – Section 6A(2) and (3) of the Tax Administration Act 1994*.

- QB 09/04 *The relationship between section 113 of the TAA and the proviso to section 20(3) of the GST Act when a registered person has not claimed an input tax deduction in an earlier taxable period.*
- *Status of the Commissioner's advice (Tax Information Bulletin Vol 24, No 10 (December 2012): 86).*

## About this document

Standard practice statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.