

# Inland Revenue Prosecution Guidelines

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# Introduction | Whakataki

1. The Commissioner of Inland Revenue is responsible for protecting the integrity of the tax system and certain social policy systems. Undertaking prosecution action is one way the Commissioner ensures his obligations are met.
2. Prosecution is an enforcement activity, usually of last resort, used against those who refuse to comply with their tax or social policy obligations and those who manipulate and abuse the system to reduce the tax they are required to pay or to obtain refunds or entitlements they are not eligible for. The sanction of criminal conviction and punishment assures other New Zealanders, who indirectly bear the burden of others' non-compliance, that the Commissioner will take enforcement action against those acting in this way.
3. The Inland Revenue Prosecution Guidelines (**Guidelines**) set out how Inland Revenue will conduct its prosecution activity and are subject to the [Solicitor-General's Prosecution Guidelines](#).<sup>1</sup>
4. Inland Revenue, when engaging in prosecution activity, always strives to act in a manner that is fundamentally fair, objective and upholds the rule of law.<sup>2</sup>
5. The principal aim of Inland Revenue's prosecution activity is to support the Commissioner's programme of compliance activity.
6. The focus of the Commissioner's compliance activity may change as risks to the integrity of the tax system evolve and change. However, the objective of the Commissioner's compliance programme is always to uphold the integrity of the tax system under s 6 of the Tax Administration Act 1994 (**TAA**). The integrity of the tax system includes the public perception of that integrity and the responsibilities of people to comply with the law.
7. Under s 6A of the TAA, it is the Commissioner's duty to collect over time the highest net revenue that is practicable within the law having regard to:
  - the resources available to the Commissioner;
  - the importance of promoting compliance (especially voluntary compliance) with the Inland Revenue Acts; and
  - the compliance costs incurred by persons.
8. The objective of the Commissioner's prosecution activity is to promote compliance (especially voluntary compliance) while balancing the demands on Inland Revenue's investigative and legal resources and holding non-compliant taxpayers to account.

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<sup>1</sup> *The Solicitor-General's Prosecution Guidelines | Te Aratohu Aru a te Rōia Mātāmua o te Karauna as at 1 January 2025* (Crown Law, Wellington, December 2024).

<sup>2</sup> To accomplish this, Inland Revenue prosecutors are guided in their decision making by the principles set out at [8] of Principal Guideline | Aratohu Mātāmua in *The Solicitor-General's Prosecution Guidelines*.

## Inland Revenue's approach to compliance

9. Compliance in a tax and social policy context means people meeting the requirement to submit accurate information and pay tax on time while meeting their social policy obligations.
10. Compliant customers:
  - register with Inland Revenue when the law requires them to do so;
  - provide complete and accurate information to Inland Revenue;
  - file returns and other information required by law on time;
  - pay correct amounts on time; and
  - claim and receive only what they are entitled to.
11. Strong compliance is critical for supporting Inland Revenue's strategic outcomes, including ensuring that revenue is available to fund government programmes and services, that people receive their entitlements, and that the oranga (wellbeing) of New Zealand as a whole is supported.
12. In general, Inland Revenue's compliance programme focuses on ensuring customers know Inland Revenue will:
  - help them when they need help;
  - detect those who are not doing the right things and promptly intervene when needed; and
  - act professionally, taking into account the customer's personal circumstances, and according to law.
13. In addition, Inland Revenue's compliance thinking is supported by six principles:
  - **People – Our people are the driving force behind compliance**  
We strive to connect with customers, assisting and acting in ways that promote long-term compliance.
  - **Understanding – The power of understanding compliance with insight**  
By gaining insight into what drives behaviour, we find the best approach to improve compliance outcomes. By accurately categorising risk we ensure we have targeted and effective interventions.
  - **Social – The social dimension, compliance through connection**  
How people perceive Inland Revenue is crucial. Three key customer beliefs underpin voluntary compliance:
    - When I'm paying tax, I'm doing a good thing.
    - When I'm trying to do the right things, Inland Revenue will help me.
    - When someone else is trying to do the wrong thing, Inland Revenue will find them.

- **Targeted – The art of precision, targeting compliance for optimal results**  
Our interventions need the right mix of tactics to ensure we address the causes of compliance issues, targeting our efforts towards where we have the greatest impact.
- **Innovation – Striving for excellence**  
We find innovative ways to manage compliance risk, including using new tools, methods or technologies.
- **Balance – The art of balance, navigating complex goals**  
In compliance, balance is about harmonising the requirements of the law and customer expectations with our ability to deliver.

## Where prosecution fits in

14. Unfortunately, some customers choose not to comply with their obligations or intentionally seek to misrepresent their personal or business circumstances to reduce the tax they are required to pay or to obtain refunds, claims or entitlements they are not eligible for. In these circumstances, the Commissioner may seek to enforce compliance through prosecution action as part of his statutory responsibility to protect the integrity of the tax and social policy system entrusted to him.
15. These Guidelines support the Commissioner's statutory responsibilities by setting out a framework that is designed to ensure that prosecutions:
  - are an appropriate, consistent and proportionate response for the type and level of non-compliance identified;
  - positively influence future compliance by appropriate publication of convictions;
  - are an integral component of a balanced compliance programme; and
  - recognise and affirm positive compliance behaviours and norms.

## Enforcement options available to the Commissioner for dealing with non-compliance

16. In a tax setting, non-compliant behaviours and situations vary widely – from the minor and inadvertent to the deliberate and serious. The Commissioner has a variety of possible responses to each individual situation and tailors his response in a way that best fits the circumstances.
17. Where the correctness of a tax assessment is in issue, dispute and challenge proceedings under the TAA may be the most appropriate response. In cases of non-payment, it may be more appropriate to consider insolvency action or another of the tools available to the Commissioner to recover unpaid tax. Tax legislation also contains provisions to assist with specific types of non-compliance.

18. However, these Guidelines are concerned with circumstances in which potential criminal offending has occurred. In that context, the main options open to the Commissioner include (from least to most severe):
  - take no action;
  - take an educative approach;
  - issue an informal warning;
  - impose a shortfall penalty; and
  - undertake prosecution action.
19. Some options may be used in combination with one another. For example, the Commissioner may impose a shortfall penalty at the same time as giving an informal warning that prosecution will be considered if a similar issue arises in the future.
20. Where the Commissioner identifies multiple compliance issues with a person's tax affairs, he may use different options to address different issues. For example, he may impose shortfall penalties in relation to one type of tax issue but prosecute in relation to another.

## How the Commissioner determines which enforcement option to use to address non-compliance

21. In determining the best enforcement option for a particular situation, the Commissioner considers the following questions:
  - a. Is the proposed option available in the circumstances of the case?
    - Is there an evidential threshold that needs to be met for the option to be exercised?
    - Is the exercise of the option in the circumstances of the case consistent with the Commissioner's other policies and procedures in relation to the option (including the Commissioner's interpretation statements on shortfall penalties<sup>3</sup> and [Standard Practice Statement on voluntary disclosures<sup>4</sup>](#))?
  - b. Is the proposed option appropriate in the circumstances of the case?
    - Is the option suitable for addressing the type of non-compliance that has occurred in this case?
    - Does the taxpayer have any particular circumstances that may qualify them for, or disqualify them from, the use of the option?

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<sup>3</sup> [IS0053](#): Shortfall penalty for not taking reasonable care; [IS0055](#): Shortfall penalty – unacceptable interpretation and unacceptable tax position; [IS0060](#): Shortfall penalty for gross carelessness; [IS0061](#): Shortfall penalty for taking an abusive tax position; [IS0062](#): Shortfall penalty – evasion.

<sup>4</sup> Standard Practice Statement (SPS) 19/02: Voluntary disclosures.

- Where the non-compliance has created victims (e.g. through identity theft) outside Inland Revenue, does the option support the victims' needs?

c. Is the proposed option an effective response to the non-compliance?

- Does the option address the taxpayer's non-compliance?
- Does the option bring the taxpayer back into compliance with their tax obligations?
- Does the option effectively hold the taxpayer accountable for their non-compliance?
- Does the option promote compliance (especially voluntary compliance) while balancing the demands on Inland Revenue's investigative and legal resources and while ensuring non-compliant taxpayers bear a cost for their non-compliance?
- Does the option promote trust in the tax system among other taxpayers?

## Potential enforcement options

22. As discussed above, there are a variety of enforcement options available to the Commissioner. The five options listed at [18] are likely to be considered when potential criminal offending has taken place. These are discussed in further detail below.

### Take no action

23. The option to take no action is always available to the Commissioner. However, where the Commissioner allocates compliance resources to look at a taxpayer's tax affairs and non-compliance is identified, it is rarely an appropriate option. This is because it does not actively address the taxpayer's non-compliance. Taking no action may be appropriate where the non-compliance is minor, inadvertent and quickly corrected. An example might be where a person receives an information demand under s 17B of the TAA and provides the information a day late. In these circumstances, the Commissioner may consider that taking no further action is appropriate.

### Take an educative approach

24. An educative approach supports taxpayers to get it right from the start, rather than having to correct them when they get it wrong.

25. This option is always available to the Commissioner. It is particularly appropriate where, following investigation, it is clear a taxpayer was genuinely mistaken or misunderstood their tax obligations and they are likely to comply with their obligations in the future as a result of the education provided.

## Issue an informal warning

26. An informal warning may be issued in conjunction with the imposition of a shortfall penalty and/or education.
27. The Commissioner is likely to issue an informal warning where the Commissioner has concerns about the taxpayer's compliance behaviour, but is uncertain about the taxpayer's level of culpability.
28. The Commissioner may issue letters recording Inland Revenue's concern at the behaviour that has been uncovered, advising how the tax laws apply to the facts as Inland Revenue understands them, and advising that in the future such conduct may be prosecuted. It is the Commissioner's view that such letters do not amount to formal warnings as defined at [2] of the [Solicitor General's Prosecution Guidelines on Warnings](#). This is because they are not capable of having ongoing or future negative consequences for the person receiving them.<sup>5</sup>
29. Where the taxpayer has been involved in the non-compliant behaviour on multiple occasions or the Commissioner has previously addressed the behaviour with the taxpayer, it is unlikely the Commissioner will exercise this option. This is especially so where the non-compliance is serious.

## Impose a shortfall penalty

30. When a taxpayer's non-compliance with their tax obligations results in a tax shortfall, the taxpayer may be liable to a shortfall penalty under ss 141AA, 141A to 141E, 141EA to 141EE and 141K of the TAA.
31. Shortfall penalties imposed under ss 141A to 141D deal with non-compliant behaviour that does not rise to the level of criminal offending. Shortfall penalties imposed under ss 141AA, 141E, and 141EA to 141EE or s 141K deal with non-compliant behaviour that amounts to criminal offending (**the criminal conduct shortfall penalties**).
32. Where a taxpayer's non-compliant behaviour falls within the scope of one of the criminal conduct shortfall penalties, the Commissioner will carefully consider (based on the criteria set out at [21]) whether the imposition of a shortfall penalty is an appropriate response to the non-compliance or whether prosecution needs to be considered.
33. Where a shortfall penalty is imposed in relation to a tax shortfall, it is likely to act as a bar to a prosecution relating to the facts giving rise to the tax shortfall (see s 149(5) of the TAA). Accordingly, the Commissioner will consider carefully whether a criminal conduct shortfall penalty should be imposed rather than undertaking a prosecution in relation to the shortfall.

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<sup>5</sup> Warnings | Ngā whakatūpato in *The Solicitor-General's Prosecution Guidelines*.

34. The Commissioner may impose a criminal conduct shortfall penalty as an alternative to prosecution where:
  - the likelihood is high that the taxpayer will voluntarily pay the shortfall penalty; or
  - the Commissioner is in a position to enforce payment; or
  - although payment is unlikely to be recovered, bankrupting or liquidating the taxpayer would be an appropriate compliance outcome in the circumstances.
35. The Commissioner is unlikely to impose a criminal conduct shortfall penalty where:
  - a criminal conduct shortfall penalty has been an ineffective compliance tool used against that taxpayer in the past; or
  - the likelihood is low that the taxpayer will pay the shortfall penalty and bankrupting or liquidating the taxpayer would not be an appropriate compliance outcome in the circumstances; or
  - Inland Revenue's compliance focus or the wider compliance context makes prosecution a more appropriate compliance outcome.

## Undertake prosecution action

36. The Commissioner recognises that undertaking prosecution action is the most resource-intensive enforcement option available and requires the courts and other agencies to spend time and resources. On that basis, the Commissioner considers that if another enforcement option for dealing with a particular case is likely to be effective, and is appropriate in the circumstances, it will usually be preferred. Prosecution should be used only where it is a proportionate response to the circumstances of the case.
37. The Commissioner generally considers prosecution only after he has considered and rejected the other enforcement options outlined above. An exception is where it is clearly the necessary response because the taxpayer's non-compliant behaviour appears to be criminal offending that is at least moderately serious. In that case, the Commissioner may move straight to considering prosecution action.
38. As a starting point, the Commissioner views "moderately serious" offending as being offending that would be likely to attract an end sentence of home detention or imprisonment. However, sometimes the Commissioner may view offending that is likely to attract a lesser penalty as moderately serious (e.g. where the offending is likely to negatively affect public perceptions of the integrity of the tax system and the responsibilities of people to comply with the law).

## Decision-making process

39. If Inland Revenue decides prosecution should be considered, it applies the Test for Prosecution set out in the Principal Guideline of the Solicitor General's Prosecution Guidelines. This test has two stages:
  - The first stage is the Evidential Test: Is there enough evidence to prove the proposed charge beyond reasonable doubt?
  - The second stage is the Public Interest Test: Does the public interest require a prosecution to be brought?
40. The Commissioner will commence a prosecution only if both tests are met.
41. An Inland Revenue prosecutor (acting independently from Inland Revenue's investigative function) will form a view as to whether the Evidential Test is met. If the Evidential Test is met, the prosecutor (after consulting with Inland Revenue's investigative function) will make a recommendation as to whether a prosecution is in the public interest.
42. In general, Inland Revenue considers four broad questions when assessing whether the public interest requires prosecution:
  - How do the features of the offending weigh for or against prosecution?
  - How do the personal characteristics and circumstances of the suspect weigh for or against prosecution?
  - How do the interests of the victims (if any) weigh for or against prosecution?
  - Are there alternative methods of resolving the matter short of prosecution that are available and appropriate in the circumstances?
43. The factors **typically** considered in answering each of the above questions are discussed next. However, these questions are not exhaustive and there may be other unique factors to consider in individual cases.

### How do the features of the offending weigh for or against prosecution?

44. Whether the features of the offending weigh for or against prosecution will require an assessment of a variety of factors, such as:
  - the seriousness of the offending;
  - the individual suspect's involvement and level of culpability;
  - whether there is a particular need to deter the type of offending; and
  - whether the likely sentence that would be imposed on conviction would be only minor.



## How do the personal characteristics and circumstances of the suspect weigh for or against prosecution?

45. How the suspect's personal characteristics and circumstances weigh for or against prosecution will require an assessment of a variety factors, such as:

- the suspect's age (prosecution may have a disproportionate impact on both the young and the elderly). Age may also be relevant to the risk of reoffending;
- whether the suspect has any disability or is experiencing any significant mental health issues that may have had a causative role in the offending and that the prosecutor is aware of;
- the suspect's prior criminal history (or lack of), including prior enforcement action short of prosecution, if the prosecutor is aware of it;
- the risk the suspect poses of ongoing offending to the public or any individual;
- whether there are features of the suspect's background known to the prosecutor which may shed light on a suspect's culpability or have played a role in their offending. As with all public interest factors, this is not a determinative factor on its own and is likely to be most relevant in cases involving less serious offending or where the decision to prosecute is finely balanced. It will often be the case that prosecution remains appropriate and such matters are best taken into account in the sentencing exercise.
- whether the suspect has already been subject to some consequence for their conduct, such as:
  - loss or harm arising from the offending itself (the suspect may have been harmed or have unintentionally harmed someone close to them);
  - post-conduct loss or harm, whether related to the offending or not (the suspect's present personal circumstances may be quite different from those prevailing at the time of the offending); or
  - legal consequences, such as employment consequences or action taken by another agency;
- any other aggravating features such as being subject to a sentence, bail release conditions, at the time of the offending. It may also be relevant that the suspect was subject to some non-judicial proceedings or order (such as disciplinary proceedings), particularly in the context of regulatory offending;
- any other mitigating features, such as:
  - expressions of remorse;
  - participation in restorative practices, whether formal (such as restorative justice conferences), or informal (such as initiatives led by local communities, iwi or hapū);
  - the provision of assistance to the authorities; or
  - efforts to repair damage or restore losses.

46. Offending against the tax system is unusual in that there is a possibility that an offender may be able to substantially right the wrong they have committed against Inland Revenue and the wider community by (re)paying the tax shortfall along with penalties and interest.
47. The Commissioner will not enter into negotiations or plea discussions regarding whether or how payments towards outstanding tax liabilities will impact on the Commissioner's prosecution decision making process in relation to whether a prosecution is in the public interest.<sup>6</sup>
48. A taxpayer who is advised that the Commissioner is considering prosecution in relation to the taxpayer's alleged tax non-compliance needs to make their own determination as to what they will do to rectify the harm caused by their non-compliance.
49. The Commissioner will then make an independent evaluation as to the impact that the taxpayer's actions (if any) to rectify their tax non-compliance has had in:
  - expressing remorse for their actions;
  - restoring the loss of tax revenue caused by their actions;
  - repairing the damage done to the integrity of the tax system by their actions.
50. Where the taxpayer can substantially rectify the situation before Inland Revenue files charges, this is often a powerful mitigating factor in favour of the Commissioner deciding that prosecution is not in the public interest. However, each situation must be assessed on its merits, and in some circumstances the damage done to the integrity of the tax system means the public interest will favour prosecution, even where the taxpayer has repaid the tax shortfall (noting they will nevertheless get credit for the rectification at sentencing should they be convicted).

## How do the interests of the victim (if any) weigh for or against prosecution?

51. Whether the interests of any victim weigh for or against prosecution will require an assessment of a variety of factors, such as:
  - any ongoing risk of harm to the victim, their whānau and the community;
  - the impact of a prosecution or decision not to prosecute on the victim's physical and mental health;
  - the impact of a prosecution or decision not to prosecute on the victim's whānau and, where relevant, their hapū and iwi;
  - how the victim's ability to obtain reparation will be affected; and
  - whether the victim is eligible for registration on the [victim notification register](#).<sup>7</sup>

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<sup>6</sup> See *Osborne v WorkSafe New Zealand* [2017] NZSC 175.

<sup>7</sup> The victim notification register gives registered victims of serious crime a way to stay informed about the person who offended against them. In Inland Revenue prosecutions, registration will require that the offending

## **Are alternative methods of resolving the matter short of prosecution available and appropriate in the circumstances?**

52. The question of whether alternative methods of resolving the matter short of prosecution are available and appropriate in the circumstances will have been considered at a preliminary stage to determine whether prosecution is an appropriate enforcement tool to use in the particular case. However, the prosecutor should reconsider the question at this stage as more information will likely be available and/or circumstances may have changed with the passage of time.
53. When the Commissioner is determining whether the public interest requires a prosecution as a response to the alleged offending, the factors favouring the public interest in prosecution include:
  - where a taxpayer's offending involves a significant number of offences, multiple periods of offending and/or a significant amount of offending;
  - where prosecution would be consistent with Inland Revenue's current compliance focus;
  - where the taxpayer has a history of non-compliance (not restricted to previous convictions);
  - the degree of non-compliance (e.g. the greater the gravity and prevalence of offending the more weight is given to prosecution);
  - the loss to Inland Revenue (the greater the loss, the more weight is given to prosecution);
  - where the integrity of the tax system has been damaged (e.g. attempts to undermine the administration of the Revenue Acts);
  - where professional advisors have misused their position of trust in relation to the tax system;
  - where there is misuse of corporate entities for a criminal tax purpose (e.g. phoenixing or using multiple entities to facilitate GST fraud);
  - where there is deliberate use of forged or false documentation or false information is provided in the course of the Inland Revenue investigation;
  - where there have been organised and systematic attacks on the tax or social policy systems; and
  - where there has been abuse of tax or social policy programmes set up in response to emergency situations (e.g. natural disasters or pandemics).
54. Conversely, factors likely to count against prosecution include where:
  - another enforcement option for dealing with the alleged offending is likely to be effective and is appropriate in the circumstances;

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has led to the victim having ongoing fears, on reasonable grounds, for their physical safety or security, or the physical safety or security of their immediate family – noting that this will be extremely rare.

- effective enforcement options as alternatives to prosecution are available, and a prosecution, although justifiable, would consume resources that could be better used elsewhere;
- the taxpayer has made a full voluntary disclosure before they are first notified of a pending investigation; and
- the taxpayer has rectified the non-compliance.

## Who makes the decision to prosecute

55. The decision to prosecute is made at a senior level in Inland Revenue.
56. The usual practice is that on conclusion of an investigation into alleged offending a Group Lead of the business unit dealing with the matter makes a decision whether to prosecute. Where another enforcement option is chosen this decision will usually be made at the Team Lead level.
57. As detailed above, before any charges are filed, the investigation file is subject to a formal legal review that considers the Evidential Test and Public Interest Test. This review is documented in a legal opinion and peer-reviewed by an experienced Inland Revenue prosecutor.
58. If there is a disagreement with the recommendation in the legal opinion, an internal review and escalation process is followed. In this context, the Legal Services Leader is the final internal point of escalation for decisions on whether to prosecute. If necessary, they may seek advice from the local Crown Solicitor or Crown Law.
59. Once a decision is made to prosecute, a prosecutor is assigned. They have responsibility for conducting the prosecution in court.
60. If new information is received that is material to the Evidential Test, the prosecutor will consult with a senior prosecutor and determine whether the test is still met.
61. Likewise, if new information is received that is material to the Public Interest Test, the prosecutor will consult with the investigator and their management team before making any decision on such matters as amending or withdrawing charges or accepting a plea arrangement.
62. The Legal Services Leader is the Inland Revenue senior manager with the authority to:
  - approve the repudiation of a plea arrangement;
  - approve appeal requests to Crown Law;
  - approve, in exceptional circumstances, departing from an agreement reached between a prosecutor and defence counsel in the course of a case management discussion that has been communicated to the court;
  - approve a decision to call inmate admissions evidence; and
  - request that a Crown Solicitor review a decision that a Crown prosecutor has made in a Crown prosecution.

## Unbiased decision making

63. Bias, both conscious and unconscious, can include assumptions, stereotypes, personal preferences and mental shortcuts that are intended to help a person make decisions efficiently rather than reasoning from first principles in every case. Bias can contribute to unfair decision-making, erroneous judgements and inappropriate organisational practices. Prosecutorial decisions should be made with a view to fairness and equitable criminal justice outcomes for all. Therefore, prosecutors should be aware of biases that may affect their prosecutorial decision making.
64. Inland Revenue uses a multi-layer sign-off process in relation to the formal legal review that sits behind the decision whether to prosecute a taxpayer (detailed above). Whether conscious or unconscious bias is present in that decision is considered at each layer of the sign-off process.
65. During the prosecution stage, where possible, significant decisions made in relation to charges and submissions made to the court will also be reviewed by another prosecutor, who will consider whether there is conscious or unconscious bias present in the decision-making process.
66. Inland Revenue's approach to unbiased decision-making adheres to the Solicitor-General's Prosecution Guidelines.
67. Inland Revenue also provides internal training and guidance to its staff (including prosecutors) on unbiased decision making.

## Victims

68. Where the tax offending has created victims external to Inland Revenue (e.g. through identity theft), the victim of the offending may ask the investigator for a review of the decision whether or not to prosecute. This review follows the same process mentioned at [58].
69. Section 18 of the TAA may limit the information that can be given to the victim regarding the outcome of this review.
70. Inland Revenue uses an organisation called iDcare to provide support to victims of identity theft. They offer a variety of services free of charge, including working with victims to regain control of their identity and protect themselves going forward.

## Selecting the appropriate charging provisions

71. The Solicitor-General's Prosecution Guidelines recognise that in most cases, the evidence will support charges for more than one offence. The prosecutor needs to decide which charge (or charges) is most appropriate in the circumstances. Inland Revenue prosecutors proceed with charges that:
  - accurately and adequately reflect the seriousness and extent of the offending; and
  - provide the court with an appropriate basis for sentencing in light of the facts and elements of the offence.

72. Though generally the offence provisions in the TAA are better suited to prosecuting tax evasion and failure to account offences, other forms of tax offending may be better dealt with under the Crimes Act 1961 (**Crimes Act**).
73. Where it is possible to charge for the offending under either the TAA or Crimes Act, the prosecutor selects the charge that:
  - is most likely to lead to the just, efficient and effective resolution of the criminal proceedings; and
  - accurately and adequately reflects the seriousness and extent of the alleged tax offending.
74. In making this determination the prosecutor will consider whether:
  - the elements of the alleged offending can be clearly and easily communicated to the factfinder in the criminal proceeding;
  - the law is clear around the particular charging provision;
  - there are any statutory presumptions or other provisions in the TAA that may be able to assist the Commissioner in proving his case or assist in the just, efficient and effective resolution of the criminal proceedings;
  - there are any tax technical issues that may be avoided by proceeding under the Crimes Act;
  - there are other consequences of obtaining a conviction on a particular charge that will assist in maintaining the integrity of the tax system; and
  - any relevant limitation period in the TAA or Crimes Act applies.
75. As a matter of standard practice, Inland Revenue usually prosecutes the natural person(s) responsible for the criminal tax offending of corporate entities or other entities recognised by tax law (**corporate or tax entities**). Inland Revenue does not generally prosecute corporate or tax entities on a standalone basis or as part of the prosecution of the responsible natural person(s).
76. This is on the basis that prosecuting the natural person(s) ultimately responsible for the tax non-compliance is the most efficient and effective use of the Commissioner's prosecution resources and the best way to maintain the integrity of the tax system while promoting voluntary compliance.
77. In addition to considering prosecution of the natural person(s) responsible, Inland Revenue generally deals with the tax compliance issues of corporate or tax entities involved in criminal tax offending through civil remedies such as liquidation or receivership.
78. A corporate or tax entity will only be charged where this is also necessary for the purpose of protecting the integrity of the tax system or where prosecution of the entity is more likely to result in the recovery of the loss caused to Inland Revenue.

## Voluntary disclosures and their effect on prosecutions

79. The Commissioner does not usually prosecute a taxpayer where the taxpayer has made a pre-notification full voluntary disclosure (as defined in s 141G of the TAA) about that taxpayer's tax position. This is an operational and policy decision made to encourage voluntary compliance in the spirit of the reduction in shortfall penalty that accompanies a voluntary disclosure.
80. Where the Commissioner forms the view that a taxpayer's actions or omissions are such that non-prosecution could lead to voluntary compliance more generally being undermined, the Commissioner may still proceed with that subsequent prosecution action. A decision to prosecute in these circumstances will be an exceptionally rare occurrence, limited to serious offences, and will require the approval of a very senior officer.
81. Where a post-notification voluntary disclosure is made, the Commissioner considers whether prosecution is appropriate in the usual way.

## Disclosure

82. In Inland Revenue prosecutions, the person in charge of disclosure under the Criminal Disclosure Act 2008 is usually the prosecutor, unless that role is transferred to another person working for Inland Revenue. The Inland Revenue investigator is responsible for collating disclosure but the prosecutor is the person ultimately responsible for ensuring disclosure obligations are met.

## Appeals

83. Inland Revenue follows the Solicitor-General's Prosecution Guidelines on appeals when deciding whether to seek to appeal a decision or defend an appeal the defendant has brought.
84. Any request by Inland Revenue for the Solicitor-General to consent to a prosecution appeal will be first approved by the Legal Services Leader.

## When the local Crown Solicitor will be instructed

85. Inland Revenue has a mature in-house prosecution function with extensive specialist expertise in prosecuting tax offending. Due to this, Inland Revenue only rarely briefs a local Crown Solicitor in matters that are not (or have not yet become) a Crown prosecution.<sup>8</sup>

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<sup>8</sup> For more information on when a matter becomes a Crown prosecution, see [Conducting prosecutions - Crown Law](#).

86. A local Crown Solicitor may be briefed on a matter that is not a Crown prosecution where:

- the travel costs of an Inland Revenue prosecutor travelling to the relevant court exceeds the costs of instructing the local Crown Solicitor;
- Inland Revenue is experiencing temporary resourcing constraints in relation to its capacity to undertake the prosecution action in-house;
- the case involves complex legal issues or novel legal questions requiring specialist non-tax advocacy skills or with high public or media interest;
- a decision has been made to call inmate admissions evidence;
- it would be inappropriate for an in-house prosecutor to manage the file due to a lack of actual or perceived independence (e.g. if the defendant was a recent Inland Revenue employee);
- a defendant is being concurrently prosecuted by another prosecuting agency who has instructed the local Crown Solicitor, and:
  - grounds exist for a joinder application between the Inland Revenue prosecution and the other prosecution; or
  - a joint trial will occur involving another prosecuting agency and it is more cost-efficient for both agencies to instruct a single Crown Solicitor to conduct the whole trial; or
  - either prosecution is likely to become a Crown prosecution.

## Limitation periods

87. Section 150A of the TAA (with certain exceptions) limits charges under the TAA to a period within 10 years of the end of the year in which the offence was committed.

88. For some fine-only offences under the TAA, the time limits in s 25 of the Criminal Procedure Act 2011 (**CPA**) may apply. As the interaction between limitation periods in the TAA and the CPA can be complex, this Guideline does not attempt to cover this in detail.

89. Where the Commissioner files charges under the Crimes Act, there is generally no applicable time limit.

# References | Tohutoro

## Legislative references | Tohutoro whakatureture

Crimes Act 1961

Criminal Disclosure Act 2008

Criminal Procedure Act 2011, s 25

Tax Administration Act 1994, ss 6, 6A, 17B, 18, 141AA, 141A to 141E, 141EA to 141EE, 141G, 141K, 149, 150A

## Other references | Tohutoro anō

Conducting prosecutions (Crown Law, 2016)

[www.crownlaw.govt.nz/about-us/prosecutions/conducting-prosecutions](http://www.crownlaw.govt.nz/about-us/prosecutions/conducting-prosecutions)

IS0053: Shortfall penalty for not taking reasonable care

<https://www.taxtechnical.ird.govt.nz/interpretation-statements/is0053-shortfall-penalty-for-not-taking-reasonable-care>

IS0055: Shortfall penalty – unacceptable interpretation and unacceptable tax position

<https://www.taxtechnical.ird.govt.nz/interpretation-statements/is0055-shortfall-penalty-unacceptable-interpretation-and-unacceptable-tax-position>

IS0060: Shortfall penalty for gross carelessness

<https://www.taxtechnical.ird.govt.nz/interpretation-statements/is0060-shortfall-penalty-for-gross-carelessness>

IS0061: Shortfall penalty for taking an abusive tax position

<https://www.taxtechnical.ird.govt.nz/interpretation-statements/is0061-shortfall-penalty-for-taking-an-abusive-tax-position>

IS0062: Shortfall penalty – evasion

<https://www.taxtechnical.ird.govt.nz/interpretation-statements/is0062-shortfall-penalty-evasion>

Standard Practice Statement (SPS) 19/02: Voluntary disclosures

[taxtechnical.ird.govt.nz/standard-practice-statements/shortfall-penalties/sps-1902-voluntary-disclosures](https://taxtechnical.ird.govt.nz/standard-practice-statements/shortfall-penalties/sps-1902-voluntary-disclosures)

*The Solicitor-General's Prosecution Guidelines: Te Aratohu Aru a te Rōia Mātāmua o te Karauna as at 1 January 2025* (Crown Law, Wellington, December 2024)

[www.crownlaw.govt.nz/publications/prosecution-guidelines](http://www.crownlaw.govt.nz/publications/prosecution-guidelines)

Victim notification register (Department of Corrections)

[www.corrections.govt.nz/information\\_for\\_victims/victim\\_notification\\_register](http://www.corrections.govt.nz/information_for_victims/victim_notification_register)

