

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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**STANDARD PRACTICE STATEMENT > GENERAL | TE TAUĀKĪ KAWENGA MAHI >
WHĀNUI**

Options for relief from tax debt

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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.

This standard practice statement (SPS) sets out the Commissioner's practice when considering the options of debt relief from the requirement to pay tax, interest and/or penalties under the Tax Administration Act 1994.

Unless otherwise specified, all legislative references in this SPS are to the Tax Administration Act 1994 (the Act).

REPLACES | WHAKAKAPIA

[SPS 18/04](#): Options for relief from tax debt

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Introduction | Whakataki

This standard practice statement (SPS) sets out the Commissioner's practice when considering the options for relief from the payment of tax under the Act.

The SPS also sets out the requirements for applying for remission of interest and/or penalties and circumstances when the Commissioner may consider remission.

Application | Whakapānga

This SPS updates and replaces [SPS 18/04: Options for relief from tax debt from the date of publication](#).

This SPS does not extend to child support obligations or student loan arrears. For more information on these subjects, see [SPS 19/05: Options for relief from child support debt](#) and [SPS 20/05: Student loan repayment – options for relief](#), or any statements issued to replace these.

Standard practice | Te Tauāki kawenga mahi

Summary

1. This SPS discusses the Commissioner's discretion to grant financial relief and the options available for customers who are unable to pay their tax on time and in full. Depending on the circumstances, the Commissioner may be able to:
 - write off the amount if collecting it would place the customer in "serious hardship" (discussed at [19–29]);
 - enter into an instalment arrangement with the customer to collect the amount owing over a period of time (discussed at [13–18]);
 - use a combination of entering into an instalment arrangement and writing off the amount (discussed at [10–12]);
 - remit certain penalties when an event or circumstance has occurred that is beyond the customer's control (discussed at [74–77]);
 - remit interest when an Order in Council has declared an emergency event that prevented the customer from making the payment. Common examples of emergency events are floods and earthquakes (discussed at [78–79]); or

- remit interest or certain penalties if that is consistent with the Commissioner's duty to collect the highest net revenue over time (discussed at [80–85]).
2. When there is discretion about whether to grant relief, this decision rests with the Commissioner. In other words, while a customer can apply for relief, it is not available as of right, and the Commissioner may decide to take steps to recover the outstanding tax, including by applying to have the customer made bankrupt or, if the customer is a company, liquidated.
 3. Another option for the Commissioner is to choose not to take any immediate action in relation to a debt. This approach of waiting may be appropriate if, for example, the customer's financial situation is not clear, or the Commissioner considers that the customer will receive funds in the near future.
 4. This SPS applies where amounts of tax, penalty or interest were correctly imposed, but there are reasons why the Commissioner may decide to write off or remit the amount or enter into an instalment arrangement.
 5. The payment of tax is fundamental to the successful operation of the tax system. Ensuring that customers are equally committed to paying tax on time and in full protects the integrity of the tax system and means that customers understand they will be treated fairly, consistently, impartially and in accordance with the law. In addition, the Commissioner is required to maximise the recovery of outstanding tax from a customer.¹ When a customer does not pay tax on time, penalties and interest will be charged.
 6. However, in some situations when a customer has amounts owing, it may be appropriate for the Commissioner to provide relief. Set out below, Table 1 summarises these situations. It outlines:
 - each of the situations where a customer has ground for relief;
 - the obligation (debt) that can be subject to relief (tax, interest or penalties);
 - the form of relief (eg, instalment arrangement);
 - which of the general factors listed at [86] are relevant to the ground for relief; and
 - the legislative authority for that ground for relief.

¹ Section 176.

Table | Tūtohi 1: Overview of situations where a customer has grounds for relief

Ground for relief	Obligation that can be subject to relief	Form of relief	Relevant factors (discussed at [86])	Legislative authority (section(s) of the Act)
Financial relief – unable to make immediate payment	Tax, interest and/or penalties	Instalment arrangement (delayed payment)	A–G (all)	Sections 177, 177A, 177B
Financial relief – serious hardship	Tax, interest and/or penalties	Write-off (no payment required)	A–G (all)	Sections 177, 177A, 177C
Unrecoverable amount	Tax, interest and/or penalties	Write-off (no payment required)	A–F	Section 177C(1)
Inefficient use of Commissioner’s resources	Tax, interest and/or penalties	Write-off (no payment required)	A–E, G	Section 176, 177C(1)
Bankruptcy, liquidation or the distribution of an estate	Tax, interest and/or penalties	Write-off (no payment required)	None – no discretion	Section 177C(1), (2) and (4)
Event or circumstance beyond the customer’s control	Penalties	Remission (no payment required)	C, E	Section 183A
Declared emergency event	Interest	Remission (no payment required)	C, E, F	Section 183ABA
Promote compliance and collect the highest net revenue	Penalties and/or interest	Remission (no payment required)	C, E–G	Section 183D

7. For each of these grounds, the Commissioner has the discretion to grant relief. Whether the Commissioner exercises this discretion will depend on factors further discussed in this SPS.
8. If, after considering the customer's circumstances, the Commissioner concludes that relief under the Act is not appropriate, the customer will remain liable to pay the tax. If the customer fails to pay the tax, the Commissioner may take steps to recover the amount owing from the customer. The Commissioner may also apply to have the customer made bankrupt or, if the customer is a company, liquidated.
9. The care and management rules in ss 6 and 6A support the balance of, on the one hand, maximising the collection of tax and, on the other hand, relieving customers from their duty to pay tax in appropriate situations.² In particular, the rules provide for the following:
 - That the Commissioner uses his best endeavours to protect the integrity of the tax system.³ In carrying out this responsibility, the Commissioner must consider a range of factors including:
 - customer perceptions of the integrity of the tax system;
 - the rights of customers to have their liability determined fairly, impartially and according to law;
 - the responsibilities of customers to comply with the law; and
 - ensuring the law is administered fairly, impartially and according to law.
 - That it is the duty of the Commissioner to collect 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 by all customers, and the compliance costs that customers incur.⁴ To fulfil this duty, the Commissioner must collect the highest net revenue **over time**. This means they must consider the short- and long-term implications of the various options open to him for collecting outstanding amounts and granting debt relief.

² IS 25/26: The Commissioner's duty of care and management – section 6A of the Tax Administration Act 1994

³ Section 6.

⁴ Section 6A(2)

Discussion | Matapaki

Financial relief: Entering into an instalment arrangement, or writing off amounts for serious hardship

General rules

10. When a customer faces financial difficulty in paying their taxes, they can ask the Commissioner to grant them financial relief. The relief options available under the legislation are for the amounts of tax, interest and/or penalties to be collected at a later time (through an **instalment arrangement**) or for the Commissioner to not recover the amounts (ie, the tax is **written off**), or to use a combination of both of these options. In addition, the Commissioner may not recover outstanding amounts **to the extent that** it would place a natural person in serious hardship.⁵
11. The above words “to the extent that” in are important. They mean that the Commissioner may apportion an amount of debt so that the maximum is collected either immediately or over time and only the amount that cannot be recovered is written off. This approach ensures the Commissioner meets the obligation to maximise the recovery of outstanding tax, as well as his care and management obligations.
12. When providing relief through a combination of an instalment arrangement and a write-off, the Commissioner will write off the agreed amount at the beginning of the instalment arrangement.

Instalment arrangements

13. An instalment arrangement is an agreement that allows a customer to pay a debt at a later date (usually by making multiple payments). It is the most common way in which customers get financial relief when they have difficulty paying an outstanding tax debt. When the Commissioner and a customer enter into an instalment arrangement, the period of the arrangement should be as short as possible without causing serious hardship. This is because the Commissioner and customer cannot enter into an instalment arrangement to the extent that the arrangement would place the customer in serious hardship.
14. An instalment arrangement can consist of one payment or multiple payments over a period of time. If the customer is making multiple payments, the instalment

⁵ Section 176.

arrangement may specify equal or varied amounts of those payments, and whether the customer can make the payments at regular or irregular intervals.

15. Interest will continue to apply during the term of any instalment arrangement.
16. The easiest way to apply for an instalment arrangement is through Inland Revenue's myIR secure online service. See [32] for details on how to do this.
17. For details on the process for requesting financial relief and the different ways a customer can request relief (including instalment arrangements), see from [30].
18. In deciding on a request for an instalment arrangement, the Commissioner will consider all of the factors, as relevant. These factors are further described at [86].

Relief for serious hardship

19. When considering serious hardship relief, the Commissioner will use the following two-step approach:⁶

Step 1 – Is there serious hardship?

20. In the first step, the Commissioner considers whether recovery of the amount owing would place the customer in serious hardship. After allowing for payment of a relevant amount of outstanding tax, the Commissioner must consider this question: **Is the customer likely to have significant financial difficulties because one or more of the following factors are likely to arise after the date when the customer requests financial relief?**⁷
 - a) The customer or their dependant has a serious illness.⁸
 - b) The customer would likely be unable to meet minimum living expenses estimated according to normal community standards of cost and quality.⁹
 - c) The customer would likely be unable to meet the cost of medical treatment for an illness or injury that they or their dependant experiences.
 - d) The customer would likely be unable to meet the cost of education for their dependant.

⁶ It is adapted from the process set out in *P v CIR* [2015] NZHC 2293.

⁷ Section 177A(2).

⁸ For more detail on how the Commissioner will determine whether a person is a customer's dependant, see [29].

⁹ For more detail on how the Commissioner will determine this, see [28].

- e) Any other factor that the Commissioner thinks relevant would likely arise.
21. If the answer to any of these factors is “yes”, the customer meets the test for serious hardship. The Commissioner must then consider Step 2 to determine what relief to grant the customer. The Commissioner and customer cannot enter into an instalment arrangement to the extent that the arrangement would place the customer in serious hardship.
22. If the answer to all of the matters stated at [20] is “no”, the customer does not meet the test for serious hardship and the Commissioner cannot write off the outstanding amounts on the ground of serious hardship.
23. In Step 1, the Commissioner cannot take into account the customer’s history of compliance with their tax obligations when determining whether the customer suffers serious hardship. The test of serious hardship also does not take into account whether the customer may become bankrupt.
24. Note that serious hardship can only apply to natural persons or shareholders of relief companies.¹⁰ A shareholder of a relief company can apply for serious hardship relief for the company if recovery of the amount owed by the company would place the shareholder in serious hardship.

Step 2 – What relief, if any, should be granted?

25. If the Commissioner considers that requiring the customer to pay any or all of the outstanding amounts would place them in serious hardship, they must consider the best way of dealing with the debt. The options are to:
- write off the outstanding debt in full;
 - write off the outstanding debt in part (to the extent that payment would place the customer in serious hardship) and have the remainder paid under an instalment arrangement; or
 - allow the debt to remain and take steps to bankrupt the customer or liquidate the relief company.

¹⁰ Section 3(1) defines a “relief company”, in relation to a taxpayer, as a company in which:

- the taxpayer owns 50% or more of the shares; or
- the taxpayer and one other person jointly own 50% or more of the shares; or
- the taxpayer is a shareholder-employee, and the company has five or fewer natural persons whose total voting or market value interests in the company exceed 50% and the company is not a special corporate entity.

26. At Step 2, the Commissioner will consider all of the factors, as relevant, described at [86], including how the debt originally arose and the customer's history of compliance with their tax obligations; these considerations are material to whether the Commissioner should grant relief.
27. Importantly, the Commissioner **cannot** write off amounts owing (including the shortfall penalty imposed) when a customer is liable to pay a shortfall penalty for an abusive tax position or evasion or a similar act, in relation to the outstanding tax.¹¹ This includes requiring the customer to pay any or all of these outstanding amounts even where it places them in serious hardship. In these cases, the Commissioner will require payment or may apply for the customer to be bankrupted or, if the customer is a company, to be liquidated.
28. The definition of serious hardship refers to "minimum living expenses estimated according to normal community standards of cost and quality" (per [20(b)] above). While these standards must be considered in the context of the wider community of New Zealand, customers' actual expenditure in different parts of the country may vary. When calculating a customer's minimum living expenses, the Commissioner will consider the reasonable costs of food, heating and accommodation in that customer's area, based on information provided by Stats NZ, together with expenditure incurred that is outside the norm due to the customer's specific circumstances.
29. The definition of serious hardship also refers to a "dependant". When determining whether a person is a customer's dependant the Commissioner will consider whether the person depends on the customer for financial support, the degree of financial support provided, and to what extent providing this financial support affects the customer's ability to meet minimum living expenses according to normal community standards.

Process to follow for financial relief

Requesting financial relief

30. When a customer feels they are in financial difficulty, they can request financial relief. They can make this application before or after the due date for payment. It may be beneficial to apply before a due date as that may stop some penalties from applying (this is discussed further at [47]). If the customer is applying to have tax written off,

¹¹ Section 177C(3). Note that "liable to pay" does not mean the liability must have been assessed, imposed or otherwise quantified. All that is required is that the customer meets the criteria in s 141D or s 141E.

they must provide evidence to show why payment of the amount owed would place them in serious hardship.

31. Customers can apply for financial relief through Inland Revenue's myIR secure online service. To do so, after logging in, they select the "I want to ..." tab and then, "Register, application and enrolment", click on "Application for relief". Customers can also apply for financial relief either verbally (by telephone or face to face with an Inland Revenue officer) or in writing.
32. Using myIR, customers have an alternative option of applying for their own instalment arrangement directly. To do so, they select the "I want to ..." tab and then, under the heading "Payments, refunds and returns", click on "Request an instalment arrangement". By applying through this method, they can:
 - instantly see a list of the total amounts owing and the due dates for each tax type;
 - propose how often they make an instalment and the amount for each instalment specified in the list; and
 - receive an automatic notification of whether the proposed instalment arrangement has been accepted or has been sent for review.
33. Instalment arrangements that customers apply for through myIR need to involve a minimum payment of \$20 a week, \$40 a fortnight or \$80 a month for debt under \$3,120. In addition, the debt should be cleared within 3 years.
34. Customers who do not meet these criteria can request an instalment arrangement by following the methods set out at [31].

Considering an application for financial relief

35. After receiving a request for financial relief, the Commissioner will consider the customer's financial position as at the date when they make the request (unless the Commissioner seeks further information or makes a counter-offer, as discussed at [36]). The Commissioner will review the information provided as part of the application and may also consider other information that Inland Revenue holds. All of the factor's A to G at [86] are potentially relevant and the Commissioner will consider them when deciding whether recovery of the outstanding amounts would place the customer in serious hardship.

36. When considering an application for financial relief, the Commissioner may take one of four actions:¹²

a) Accept the request.

If the Commissioner accepts the request, the customer will be advised in writing of one of the following:

- the tax type(s), the relevant period(s) and any amounts of tax written off; or
- details of any instalment arrangement, including the repayment amounts and frequency of payments; or
- if applicable, any remaining net losses, excess amounts and/or excess imputation credits carried forward (see [68]).

b) Seek further information from the customer.

To help the Commissioner make a decision on granting relief, the customer may be asked to provide additional information, including relevant financial information. The customer must supply the requested information within 20 working days (or within any longer period allowed by the Commissioner).

Information that Inland Revenue receives outside that timeframe will be treated as a new request for financial relief. Depending on when the customer made the original request and when they provided further information, this could mean that additional late payment penalties apply (this penalty is discussed further from [47]).

c) Make a counter-offer.

The Commissioner may make a counter-offer. This may occur where, for instance, the Commissioner considers that the customer can afford to make a lump sum payment or that an arrangement involving a lump sum payment, a partial write-off and a partial instalment arrangement may be more appropriate. If the Commissioner makes a counter-offer, the customer must respond to that offer within 20 working days (or within any longer period that the Commissioner allows). A response received outside that timeframe will be treated as a new request for financial relief.

d) Decline the customer's request.

The Commissioner may decline the customer's request when:

¹² Section 177(3).

- recovery of the outstanding tax would not cause serious hardship;
- the customer has not provided enough information to support their request; or
- for instalment arrangement requests – the customer has not met their obligations under a previous instalment arrangement or the arrangement the customer is proposing bears little relation to the debt.¹³

The customer will be informed of this decision and the reasons for declining the request.

37. A customer who has entered into an instalment arrangement may at any time ask that the arrangement be renegotiated.
38. The Commissioner may only renegotiate an instalment arrangement after 2 years from the date that the arrangement was entered into. For example, it may be appropriate to renegotiate an instalment arrangement if the customer incurs new debt that they are unable to pay. Any renegotiation will be treated as a new request for financial relief, which the Commissioner may (or may not) accept (as discussed at [36]).¹⁴
39. Legislation does not set a time limit for the term of an instalment arrangement. However, the Commissioner's practice is that instalment arrangements are made for a period that is as short as possible – no more than 3 years.
40. Through the term of the instalment arrangement, a customer is expected to meet their current tax obligations. Alternatively, as indicated above (at [38]), if they are unable to meet those obligations, the customer will need to make a new application for financial relief.

Outstanding returns required

41. When considering an application for financial relief, the Commissioner may require the customer to file any outstanding returns. However, the Commissioner may consider requests for relief where customers have not filed returns on a case-by-case basis, taking into consideration those factors stated at A to G of [86].

¹³ While the Commissioner's duty to collect highest net revenue is paramount, this duty is to be balanced against the Commissioner's care and management obligations. As the court held in *Russell v CIR* [2015] NZHC 754, to preserve the integrity of the tax system, the Commissioner may refuse to enter into an instalment arrangement with a taxpayer where the arrangement proposed bears little relation to the real debt.

¹⁴ Section 177B(3), (4) and (5).

Cancelling an instalment arrangement where customer provides false or misleading information

42. The Commissioner may cancel an instalment arrangement if the customer has provided false or misleading information, or if the customer is not meeting their obligations under the instalment arrangement.
43. When the Commissioner cancels an instalment arrangement for false or misleading information, Inland Revenue will impose monthly incremental penalties retrospectively, as if the Commissioner and customer had not entered into the instalment arrangement.

Trusts, trustees and serious hardship

44. Trustees are personally liable for the debts of a trust (including tax debts). If there is insufficient trust property to pay a trust debt, a trustee may have to pay the debt out of their own resources. When a trust has more than one trustee, those trustees are jointly and severally liable for the trust's tax obligations.
45. Trustees, in their capacity as natural persons, may experience serious hardship as a result of having to meet a trust's tax debt from their personal resources. If the payment of a trust debt places one trustee in serious hardship, but not the other trustees, then those other trustees are liable to meet the debt.
46. The Commissioner will consider serious hardship applications from natural person trustees and, on a case-by-case basis, may write off tax on grounds of serious hardship when the tax cannot be recovered by all of the trustees.

Late payment penalties and financial relief

47. When a customer does not make a tax payment by the date it is due,¹⁵ they may need to pay late payment penalties. Those penalties consist of three components. First, a 1% penalty that is applied the day after the payment was due; second, a 4% penalty that is applied 7 days after the payment was due; and finally, an incremental late payment penalty of 1%, which is applied every month.

¹⁵ A payment is due on either the due date or, if the amount has a new due date set under s 142A, the collection date. Section 142A applies where the Commissioner makes a new or amended assessment of tax, and it requires the Commissioner to fix a new date for the payment of tax. The new date must be at least 30 days after the Commissioner issues the new assessment or reassessment.

48. In certain situations, some of these penalties may not be imposed. If a customer anticipates they will not be able to make payments on time, they should contact Inland Revenue as soon as possible. If they apply for financial relief before the due date and the Commissioner grants relief, fewer penalties may be applied. Table 2 below shows when a penalty will be applied (√), when a penalty will not be applied (X) and the section of the Act that is relevant in each case.

Table | Tūtohi 2: The application of late payment penalties

Situation	1% initial late payment penalty; one-off	4% initial late payment penalty; one-off	1% incremental late payment penalty; monthly
Customer applies for financial relief before due date ¹⁶ and relief is granted	√ (s 139BA(1))	X (s 139BA(1))	X (s 139BA(2))
Customer applies for financial relief on or after due date and relief is granted	√ (s 139B(2)(a)(i))	√ (s 139B(2)(a)(ii))	X (s 139BA(2))
Customer applies for financial relief at any time and relief is declined	√ (s 139BA(6))	√ (s 139BA(6))	√ (s 139BA(6)) ¹⁷
The Commissioner and customer enter into an instalment arrangement	√ (s 139BA(1))	X if relief was requested before the due date (s 139BA(1)) √ if relief was requested after the due date (s 139B(2)(a)(ii))	X Not applied if the customer complies with the instalment arrangement (s 139BA(4))

¹⁶ As footnote 10 explains, "due date" can mean either the date a payment is due or, if the amount has a new due date set under s 142A, the collection date.

¹⁷ Incremental penalties apply only to certain tax types under s 139B(2B).

Further matters relating to write-offs

Reversal of a write-off

49. The Commissioner may reverse a write-off if he originally wrote off the tax based on false or misleading information that the customer provided.¹⁸
50. In addition, the Commissioner may reverse a write-off made on the grounds of serious hardship if the customer declares bankruptcy or is subject to bankruptcy proceedings within a year of the tax being written off. Alternatively, where the customer is a relief company, the Commissioner may reverse such a write-off if the relief company is liquidated or is in the course of being liquidated within a year of the write-off.
51. If the Commissioner partially writes off some debt and enters into an instalment arrangement for the remainder, they may not reverse the write-off even if, during the term of the instalment arrangement, the customer does not meet the terms of the instalment.¹⁹
52. Where amounts were incorrectly charged (eg, resulting from an error by Inland Revenue), they will be reversed rather than remitted or written off.

Write-off – voluntary administration

53. During the voluntary administration process as provided in Part 15A of the Companies Act 1993, the Commissioner may enter into a deed of company arrangement and, as a result, may receive some payments from the customer. Amounts that are irrecoverable will not be written off under the Tax Administration Act 1994 until the company has been released from debts as a result of the process followed under the Companies Act 1993.

Write-off – no asset procedure

54. The “no asset procedure” is a one-off process that provides a fresh start to natural persons who are in financial difficulty. It is available as an alternative to bankruptcy for those people who have insufficient income, and no assets left to sell to repay debts of between \$1,000 and \$50,000. The New Zealand Insolvency and Trustee Service administers this procedure.

¹⁸ Section 177C(7).

¹⁹ Section 177C(8).

55. Any tax owed by a customer who is subject to the no assets procedure is frozen and the Commissioner cannot take any recovery action. Once a customer has been released from debts covered by this procedure, the Commissioner will then write off the balance of the outstanding tax. Any debt or liability incurred by fraud, however, becomes enforceable after a customer is discharged from the no asset procedure.²⁰

Write-off – debt repayment orders

56. A debt repayment order is a formal arrangement between a debtor and a creditor that allows the debtor to pay back any debts by instalments. It is an alternative to bankruptcy or the no asset procedure and applies to persons who do have assets or income and where their debt is of no more than \$50,000. The New Zealand Insolvency and Trustee Service administers debt repayment orders.
57. The Commissioner cannot pursue any tax owed (with the exception of student loan and child support debt) after the completion of a debt repayment order. Instead, the tax owed will be written off.²¹
58. Normal debt collection procedures will continue for any child support and student loan debt.

Write off – bankruptcy, liquidation or the distribution of an estate

59. The Commissioner must write off amounts that cannot be recovered because of bankruptcy or liquidation.²² They will write off outstanding tax²³ only on receiving advice from the Official Assignee that a dividend is highly unlikely to be paid.
60. Similarly, when a company is liquidated, the Commissioner will write off outstanding tax that cannot be recovered on receiving a final report or advice from the liquidator that there will be no dividend to Inland Revenue.
61. When an estate has been distributed, the Commissioner must write off any outstanding tax that cannot be recovered on receiving confirmation from the administrator that the estate has been distributed.²⁴
62. The Commissioner may only reinstate tax that he has written off if:

²⁰ Section 377A(2) of the Insolvency Act 2006.

²¹ Sections 176(2)(a) and 177C(1).

²² Section 177C(2).

²³ With the exception of child support amounts owing.

²⁴ Section 177C(2).

- by operation of law, additional funds are received from a customer after that customer has become bankrupt or has been liquidated; or
 - additional funds due to a customer's estate are discovered after that customer's estate has been distributed.²⁵
63. When a customer had been liable to pay a shortfall penalty for evasion or an abusive tax position and the customer is bankrupt or liquidated (if a company) then, despite the usual rule that these types of penalties cannot be written off²⁶, the amount owing will be written off.²⁷
64. If the Commissioner and a customer have entered into an instalment arrangement and the customer then becomes bankrupt or (if a company) is liquidated, Inland Revenue must include the outstanding amount under the instalment arrangement in its proof of debt to the Official Assignee.²⁸

Write-off – inefficient use of resources

65. The Commissioner has limited resources to undertake what can sometimes be a lengthy process to collect outstanding amounts. The Commissioner will not recover outstanding amounts if the recovery of the outstanding tax, interest or penalties would be an inefficient use of limited administrative resources.²⁹ If the Commissioner makes a decision under this ground, the tax will be written off.
66. When making a decision about whether to write off outstanding amounts under this ground, the Commissioner must take into account the factors stated at A to E of [86].
67. In considering this ground for writing off tax, in some instances the Commissioner will pursue amounts owing even though the cost of collection may be higher than the outstanding tax. In these cases, the Commissioner may still consider recovery action to be appropriate if it is consistent with their obligations under ss 6 and 6A. These obligations include protecting the integrity of the tax system, promoting compliance, especially voluntary compliance, and collecting over time the highest net revenue.³⁰

²⁵ Section 177C(4).

²⁶ Section 177C(3).

²⁷ Section 177C(2),

²⁸ Section 177CA.

²⁹ Section 176(2)(a).

³⁰ *Russell*.

Write-off – the impact on tax losses, excess imputation credits and excess amounts

68. When the Commissioner writes off outstanding tax for a customer - other than a customer that is a partnership (the impact on partnerships is discussed at [69]) - who has tax losses, imputation credits brought forward, or excess amounts to carry forward, then consequential adjustments are required. This ensures that the effect of having an amount of tax written off is correctly reflected in future returns:

- If the Commissioner writes off outstanding tax for a customer who has net losses, part or all of the customer's tax losses will also be extinguished. Calculating the amount extinguished involves, first, dividing the amount written off by:
 - 0.33, if the customer is not a company; or
 - 0.28, if the customer is a company.

The second step is to then reduce the tax losses by that amount.³¹ This calculation method reduces any losses that can be carried forward.

- If the Commissioner writes off outstanding tax for a customer who has imputation credits brought forward from a previous year, all or part of these credits will be extinguished on a dollar-for-dollar basis.³²
- If the Commissioner writes off outstanding tax for a customer who has excess amounts to carry forward, the Commissioner must extinguish all or part of that excess amount by dividing the amount written off by:³³
 - 0.33 (if the customer is not a company); or
 - 0.28 (if the customer is a company)
- When a customer has both tax losses and imputation credits brought forward from a previous year, the net losses will be extinguished first.³⁴ A customer's tax losses and/or imputation credits can be extinguished even if the tax written off is not income tax.

³¹ Section 177C(5).

³² Section 177C(5B).

³³ Section 177C(5BA).

³⁴ Section 177C(5C).

Write-off – how losses are extinguished in partnerships

69. When the Commissioner writes off outstanding tax for a partnership that has tax losses, the way losses are extinguished depends on the particular tax type making up the debt and the type of partnership:

- **General partnership; income tax:** For income tax, a partnership is treated as transparent, so income is returned, and losses are carried forward, by the individual partners. The Commissioner may grant relief to an individual partner by writing off their income tax debt. If that individual partner has losses, some or all of the losses will be extinguished. The amount extinguished is calculated by dividing the amount written off by 0.33. The tax position of other partners is irrelevant.
- **General partnership; GST:** For GST, a general partnership itself is registered for GST, and any debt is payable by the partnership. However, the individual partners are also jointly and severally liable for any GST debt. Therefore, if a partnership cannot meet its GST liability, the debt is payable by the individual partners. If payment of the debt would place one partner in serious hardship but not the other partners, then those other partners are liable to meet the debt.

When the Commissioner decides to write off the GST debt of the partnership the partners must collectively have their losses extinguished by dividing the amount written off by 0.33. Where only some partners have losses available to extinguish, or where individual partners differ in their losses, it will be necessary to apportion the total extinguished losses between the individual partners. This should be done in a way that is fair and reasonable. In the first instance, this will mean extinguishing individual losses equally. However, where a partner has insufficient losses, the losses of other partners will be extinguished up to the maximum.³⁵

- **General partnership; PAYE, RWT, NRWT, other tax types:** Losses will be extinguished depending on the liability of the partners.

When each of the partners is liable for their proportionate share of the outstanding tax, each partner can have losses extinguished proportional to the amount of outstanding tax that they were liable for.

When the partners are jointly and severally liable for an amount of outstanding tax, each partner can have losses extinguished up to the total amount of tax

³⁵ The maximum is the amount set out in s 177C(5), calculated for partnerships as the total amount written off divided by 0.33.

written off (provided that the total amount extinguished from all partners does not exceed the total amount of tax written off). Note that individual partners owe PAYE debt on a joint and several basis.

- **Limited partnership:** A limited partnership is comprised of general partners (responsible for the management of the partnership) and limited partners. General partners are liable for the partnership debt (only to the extent that the partnership cannot pay) and the principles applied to extinguish losses are the same as those described in the bullet points above. A limited partner who takes part in the management of the limited partnership is liable to the same extent as a general partner if, at the time that the debt was incurred:
 - the limited partner took part in the management of the limited partnership;
 - the Commissioner knew the limited partner took part in the management of the limited partnership; and
 - the Commissioner believed on reasonable grounds that the limited partner was a general partner.

A limited partner who does not take part in the management of the partnership is not liable for the partnership debt.

70. Because the Commissioner needs to know the correct value of losses or imputation credits when making the adjustments required after writing off outstanding tax, a customer may be required to file any outstanding tax returns to enable these to be determined.

Write off – unintended credit

71. In some cases, a write-off of the tax payable is actioned and then the underlying assessment is amended to reduce the amount of tax payable. In this situation, to avoid creating an unintended credit, the write-off will be adjusted to match the reduced tax liability. For example, if a customer has a debt of \$1,000 that is written off and the underlying assessment is then amended to \$700, the write-off must be amended to align with the assessment of \$700 to prevent a \$300 credit arising.

Remission of penalties and interest

72. The purposes of the penalty provisions in the Act are to:³⁶
- encourage customers to comply voluntarily with their tax obligations and to cooperate with Inland Revenue;
 - ensure that penalties for breaches of tax obligations are imposed impartially and consistently; and
 - sanction non-compliance with tax obligations effectively and at a level that is proportionate to the seriousness of the breach.

In addition, the purposes of charging customers interest are to:³⁷

- compensate the Commissioner for the loss of use of money; and
 - encourage customers to pay the correct amount of tax on time.
73. However, the Act recognises that, in some circumstances, charging interest or penalising a customer for an unintended default may reduce voluntary compliance. Because of this, the Commissioner may remit interest and/or penalties in the following situations:

Remission – event or circumstance beyond the customer’s control

74. Where a customer has not complied with a tax obligation because of an event or circumstance beyond their control the Commissioner can remit penalties that have been charged.
75. A customer can request a remission for the following penalties:³⁸
- a late filing penalty;
 - a non-electronic filing penalty;
 - initial and incremental late payment penalties;
 - imputation penalty tax;

³⁶ Section 139.

³⁷ Section 120A.

³⁸ Section 183A.

- Māori authority distribution penalty tax;
- a shortfall penalty imposed by s 141AA for failing to make a deduction from a payment to a non-resident contractor;
- a civil penalty imposed under s 215 of the KiwiSaver Act 2006 for employers who fail to provide information; and
- a penalty for not paying a PAYE amount imposed by s 141ED.

Penalties cannot be remitted that relate to interest or shortfall penalties (other than those imposed by ss 141AA and 141ED)³⁹.

76. Before remitting a penalty, the Commissioner must be satisfied of the following three factors:⁴⁰

- **The penalty arose from an event or a circumstance beyond the customer's control.**

The Act provides that an "event or circumstance" may include an accident, disaster, illness, or emotional or mental distress. However, the Commissioner also has the discretion to consider other circumstances that are not specifically included in this list.

An "event or circumstance" does not include a customer's financial position. Providing financial relief has already been discussed in this statement.

The Commissioner cannot remit penalties under this ground if they arose from an event or circumstance that an agent of the customer caused through an act or omission. However, remission can be considered if the act or omission was caused by an event or circumstance that was beyond the control of the agent and could not have been anticipated, and the effect could not reasonably have been avoided.

The Act does not define the term "agent". For practical purposes, the Commissioner considers an agent is someone who the customer has given the authority to act on their behalf in relation to their general, or specific, tax matters. An agent could include tax agents, intermediaries, representatives and other nominated persons.

³⁹ Section 141AA – Shortfall penalty if non-resident contractor relieved from all liability to pay tax on contract payment. Section 141ED – Penalty for unpaid amounts of employers' withholding payments.

⁴⁰ Section 183A(1A).

The Commissioner will also consider whether the agent could have avoided their default by complying with accepted standards of business organisation and professional conduct.

- **There is reasonable justification for the breach of the relevant tax laws.**

The Commissioner will look at the reason why the customer did not meet their tax obligations.

The Commissioner must identify the event or circumstance that the customer relied on. Once identified, the Commissioner will then consider whether the event or circumstance provided the customer with reasonable justification for not meeting their tax obligations.

- **The customer corrected the failure to comply as soon as it was practicable to do so.**

The customer must have filed the relevant return and/or paid any outstanding core tax as soon as practicable.

77. In deciding whether remission is appropriate, the Commissioner will consider these factors along with any other information that is considered relevant. The Commissioner may request supporting information, and this must be supplied by the customer for the application to be considered further.

Remission – declared emergency event

78. Section 183ABA allows the Commissioner to remit interest charged as a result of the customer being unable to make a reasonably accurate forecast of provisional tax and/or failing to make the payment when an emergency event is declared.

79. Before interest can be remitted the Commissioner must be satisfied that:

- **An emergency event has occurred.**

An emergency event is an event that meets the definition of “emergency” in s 4 of the Civil Defence Emergency Management Act 2002 **and** is declared to be an emergency event.

An emergency event can be natural or otherwise. For example, as well as including such events as earthquakes and tsunamis, it also includes such events as technological failure, riot or warlike act.

- **The customer was significantly adversely affected by the emergency event.**

The customer must have been so significantly affected by the emergency event that they were unable to comply with their tax obligations because they:

- were, for instance, unable to access their records – for example, because they were evacuated, or their home or place of business was badly damaged.
- were unable to make payments because they were significantly adversely affected by the emergency event. For example, extensive infrastructure damage prevented any local movements, disrupted postal deliveries or damaged phone and/or internet networks.

The customer must be able to describe how they were significantly adversely affected and provide any supporting information the Commissioner requests.

- **The customer paid the tax owing and applied for remission of interest as soon as it was practicable to do so.**

A customer who is seeking remission must pay the tax and apply for the remission of interest as soon as practicable after the emergency event. When “as soon as practicable” will depend on the circumstances of each case.

- **The Commissioner is satisfied that the emergency event’s effect on the customer makes the remission equitable.**

The Commissioner will grant remission of interest where the above conditions have been satisfied.

Remission – consistent with duty to collect the highest net revenue over time

80. Section 183D allows the Commissioner to remit interest and/or penalties if he is satisfied that it is consistent with his duty to collect the highest net revenue over time.

81. Under this provision, the Commissioner may remit:

- a late filing penalty;
- a non-electronic filing penalty;
- a late payment penalty;
- a shortfall penalty imposed by s 141AA;
- a civil penalty imposed by s 215 of the KiwiSaver Act 2006;

- an employers' withholding payment penalty imposed by s 141ED; and
- interest under Part 7.

The Commissioner's ability to remit penalties does not apply to shortfall penalties other than those imposed by ss 141AA and 141ED.

82. Before the Commissioner can remit a penalty or interest, under this provision the following matters must be considered:

- **Is remitting the interest and/or penalties consistent with the Commissioner's duty to collect over time the highest net revenue that is practicable within the law?**

The Commissioner must consider whether, and the extent to which the penalty and interest rules can promote compliance, especially voluntary compliance by all taxpayers, and in that way increase the revenue collected over time.

- **Does imposing penalties and interest promote compliance, especially voluntary compliance?**

As noted previously in this statement, encouraging voluntary compliance is one of the key purposes of the penalty rules. The Commissioner recognises that pursuing the collection of penalties in some circumstances will not be consistent with those aims. For example, it may be inconsistent with the purposes of the penalty rules when a penalty has been imposed due to:

- a genuine error; or
- a one-off default.

83. When considering remission, the Commissioner must not take the customer's financial situation into account.⁴¹ This means the customer's ability (or inability) to pay the tax owing is not a factor when deciding whether to remit an amount under this section.

84. In deciding whether remission is appropriate, the Commissioner will consider the following factors:

- Why did the customer pay or file late, or not file electronically?
- Was the non-compliant action the result of a genuine oversight or a one-off default?
 - Requests for remission because of a genuine oversight or a one-off default apply to penalties only. The Commissioner will not remit interest in these

⁴¹ Section 183D(3).

cases as it is compensation to him for the loss of the use of the money over time.

- The Commissioner will not remit interest charged because of an error or default by a third party, as it is compensation to him for the loss of the use of money over time.
 - What other information does the Commissioner consider to be relevant in assessing the application? In particular, how will the remission contribute to the collection of the highest net revenue over time and otherwise promote voluntary compliance among all customers?
85. The Commissioner may request supporting information, and this must be supplied by the customer for the application to be considered further.

Factors for the Commissioner to consider when deciding whether to grant financial relief and/or remission

86. In deciding whether to grant financial relief and/or remission, the Commissioner will consider whether the customer meets the legislative criteria for each form of relief. Of particular importance is the Commissioner's obligation to maximise the recovery of outstanding amounts of tax.⁴² In addition, the Commissioner may take into account other, more general factors as explained below. These factors are not listed in order of importance, and which factors apply and the weighting that they are given will depend on the particular case. [Table 1](#) summarises the factors that are relevant for each of the various grounds for relief.

A. Customer's financial position

The Commissioner will consider the customer's ability to pay the outstanding amount, either immediately or in the future. Depending on the circumstances, this may include considering:

- income and expenses (including income and expenditure for relationship property, and the income of dependent family members as appropriate);
- assets and liabilities, including asset valuations;

⁴² Section 176.

- a 12-month projection of cashflow (including whether the customer is due to receive any sums of money in the near future, eg, from the sale of a property or from an inheritance);
- a statement of financial performance (a profit and loss statement);
- a statement of financial position (a balance sheet);
- a list of debtors and creditors, including details of how much is owed to or by the customer; and
- any vested interest held in another entity (eg, a trust).

The Commissioner will compare the customer's financial position with the living costs set out in the Household Expenditure Guide.⁴³ This comparison is simply a starting point, and the Commissioner will consider other expenditure that the customer incurs due to their personal circumstances.

B. Options available to the Commissioner

The Commissioner has a duty to maximise the recovery of outstanding tax from a customer and so is obliged to compare the value of the likely recovery from accepting a customer's proposal with other viable options for recovery. The options available are to:

- collect the amount owing in full;
- enter into an instalment arrangement;
- write off amounts;
- remit amounts; and
- apply to have the customer made bankrupt or if a company, liquidated.

In some cases, it is clear which option will maximise recovery. In other cases, two or more options could yield similar returns. For this reason, it is necessary to determine which option, or combination of options, will maximise recovery.

C. Integrity of the tax system

One of the core obligations that the Act imposes on the Commissioner is that they must use their best endeavours to protect the integrity of the tax system.⁴⁴

⁴³ Household Expenditure Guide – AD164.

⁴⁴ Section 6.

The following factors are important to consider when deciding whether to grant relief and/or remission:

- **Customers' perception of integrity.** The Commissioner must ensure that when he grants relief to some customers, others in the taxpaying community do not view it as unjust. Ensuring that this occurs requires the Commissioner to act legally and to provide consistent treatment to all customers.
- **The responsibilities of customers to comply with the law.** Customers have a core responsibility to pay their tax in full and on time. When a customer has deliberately failed to comply with their tax obligations, the Commissioner will take steps to recover the amount. These steps may include applying to have the customer made bankrupt or, if the customer is a company, liquidated.
- **The responsibilities of those administering the law to do so fairly, impartially and according to law.** Tax obligations are imposed under the law and apply to all customers. Customers must be treated consistently under the law.

Where a customer's offer to pay all or part of the outstanding amounts (eg, through an instalment arrangement) would yield more tax revenue than bankruptcy or liquidation action, the Commissioner is likely to consider this offer favourably. However, before making a decision to accept the offer, the Commissioner will weigh it up against the other factors. In many cases, any amount not recoverable under the agreement will often be written off at the time the Commissioner and customer enter into the agreement.

D. Resources available to the Commissioner

The Commissioner must consider the resources required to carry out that action and the resources that are available. The Commissioner must then decide whether the use of resources is justified and, in making this decision, will consider the relative importance of other factors.

E. Importance of promoting compliance

Promoting compliance, and especially voluntary compliance, is one of the Commissioner's most important care and management responsibilities and doing so involves a range of considerations. Voluntary compliance underpins tax administration in that customers who comply with their tax obligations voluntarily do so with an expectation that others will do likewise. It is central to the proper functioning of the Inland Revenue Acts and would be undermined if customers did not see that the

Commissioner was taking firm action in dealing with those who fail to meet their tax obligations.

F. Customer's reasons for failure to pay

The Commissioner will consider the circumstances leading to the customer having outstanding amounts and the causes of those circumstances. The Commissioner will also consider to what extent the customer contributed to, or failed to mitigate, those circumstances.

G. Customer's compliance history

The Commissioner will consider a customer's whole history of compliance. In particular, the customer's history of filing tax returns and making tax payments on time. The Commissioner will also consider the outcomes of previous relief granted (eg, whether the customer met their obligations under previous instalment arrangements, or whether they changed their actions to prevent recurrent financial hardship).

Cancellation of interest

87. A customer is not liable to pay interest on unpaid tax to the extent that the interest arises because the customer relied on a "Commissioner's official opinion".⁴⁵ A Commissioner's official opinion includes opinions and official statements the Commissioner has given about the customer's specific situation.⁴⁶ This treatment does not apply to misinterpretations of what is written in an Inland Revenue publication. Note that if this provision applies, the interest is cancelled rather than written off or remitted.

Reviewing a decision of the Commissioner

88. There is no statutory right of challenge where the Commissioner has made a decision to grant relief, decline to grant relief or cancel relief.⁴⁷
89. However, if a customer is concerned that the Commissioner has not given their circumstances proper consideration, they should raise their concern with the Inland Revenue officer they have been dealing with and ask for the decision to be

⁴⁵ Section 120W.

⁴⁶ Section 3 defines "Commissioner's official opinion".

⁴⁷ Section 138e(1)(e)(iv).

reconsidered by the officer's leader. If a customer is still not satisfied, they also have the option of having a decision reviewed by the Office of the Ombudsman. Customers can also consider obtaining the appropriate independent professional advice.

90. If a customer is not satisfied with the level of service they have received from Inland Revenue, they can find more information about the Inland Revenue Complaints Management Service at [Complaints management](#) on Inland Revenue's website or by calling 0800 274 138 (Monday to Friday between 8 am and 5 pm).

This Standard Practice Statement is signed on XX Month 2026.

Stephen Donaldson

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Inland Revenue | Te Tare Taake

References | Tohutoro

Legislative references | Tohutoro whakatureture

Civil Defence Emergency Management Act 2002, s 4

Companies Act 1993, Part 15A

Insolvency Act 2006, s 377A

KiwiSaver Act 2006, s 215

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[Student loan repayment – options for relief](#)

About this document | Mō tēnei tuhinga

Standard Practice Statements describe how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

The examples provided in this Standard Practice Statement are intended to illustrate the Commissioner's position. They are not intended to illustrate any other position by the Commissioner on any other areas of the law.