



Standard practice statement

ED0218

Student loan repayment - options for relief

Introduction

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 Statement sets out Inland Revenue's practice for providing relief¹ under the Student Loan Scheme Act 2011 (the "Act"). It covers relief from payments for:

- overdue student loan repayment obligations
- student loan repayment obligations not yet due
- student loan repayment obligations for the current tax year, and
- penalty² and late payment interest imposed on overdue student loan repayment obligations.

Application

This statement is intended to apply from 1 April 2020. It will replace SPS 11/03: Student Loans – relief from repayment obligations, which was published in Tax Information Bulletin, Vol 23, No 2 (March 2011).

Standard practice

Summary

1. Applications for relief are generally not required by any specific time. However, an application for anticipated hardship for future year's obligations must be received by Inland Revenue on or before 31 March in the current tax year.
2. An application will be considered based on a borrower's current or future ability to meet their student loan repayment obligation. In considering an application, the Commissioner will look at all options available to a borrower to enable them to meet their loan repayment obligations.

¹ The reference to "relief" for the purposes of this statement is to the overall relief provisions contained in Subpart 4 of the Act and includes "hardship relief" in section 147 of the Act. The reference to "serious hardship" is as provided under section 147(1)(a) of the Act, where hardship relief may be granted based on serious hardship.

² The reference to "penalty" in this statement refers to penalties defined in section 146A of the Act and does not include abusive tax position penalties or evasion or similar act penalties as per sections 141D and 141 E of the Tax Administration Act 1994.

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

3. When providing relief, the Commissioner may:
- refrain from issuing a notice of assessment and writing off a student loan repayment obligation for \$20 or less;
 - refrain from the collection of any student loan repayment obligation payable if more than \$20 but less than \$334 (excluding late payment interest);
 - reduce any amount that must be paid by a borrower for the current tax year, or the next tax year;
 - reduce a repayment obligation for the previous tax year;
 - agree to an instalment arrangement to repay an unpaid amount;
 - refund any amount paid;
 - cancel some or all the late payment interest if it would be equitable to do so.

Contents

Paragraphs

Request for relief	4
Relief options	9
Relief from small amounts	9
Reduce a payment obligation	10
Salary and wage earners	11
Income from other sources	15
Overseas based borrowers	18
Hardship relief: serious hardship and other special reasons.....	19
Serious hardship	20
Other special reasons	24
Examples	
Entering into an instalment arrangement	27
Refund any amount paid	33
Relief from late payment interest and penalties	34
Consideration of requests for relief	39
Reviewing a decision	46
Change in circumstances	46
Misleading or false information	48
Service feedback	49
Challenges	51
Significant over-payments	52

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

Detailed discussion

Request for relief

4. Borrowers are encouraged to contact Inland Revenue at the earliest opportunity if they think that they may have trouble meeting their repayment obligations on time, so that the options for payment can be discussed.³
5. Requests can be made by telephone, electronically using Inland Revenue's myIR Secure Online Services, or other manner acceptable to the Commissioner.
6. NZ resident borrowers may use the *Disclosure of financial position (IR590)* form www.ird.govt.nz (search keywords: IR590) as a guide to the information required in support of their application for hardship relief.
7. Overseas-based borrowers must apply for hardship relief in writing and provide full details of their financial situation.
8. A request for relief should set out the borrower's circumstances and clearly explain the reason for requesting hardship relief. A borrower will need to show why payment of their loan repayment obligation will cause them serious hardship or show why they think relief should be given for some other special reason. Each application will be considered on its own merits. The Commissioner may ask the borrower to provide further information in support of their request.

Relief options

Relief from small amounts

9. For small amounts owed, the Commissioner:
 - will not issue an assessment or collect⁴ a student loan repayment obligation, if the amount payable is less than \$20. However, this discretion will not generally apply to situations where borrowers have not provided their employer a "SL" Tax Code Declaration and a pay period student loan obligation repayment shortfall occurs as a consequence. Alternatively, when a borrower's consolidated loan balance is less than \$20 at the end of the year, a write-off will occur at that date; or
 - if the amount is \$20 or more but less than \$334 (excluding late payment interest), the Commissioner may choose to not collect the small amount if the due date for payment has passed. However, the amount not collected will be added back to the loan balance and where applicable will accrue interest.

Reduce a repayment obligation

10. A student loan borrower's repayment obligation may be reduced if the Commissioner is satisfied that serious hardship will be caused as a consequence of a repayment obligation or there are other special reasons that make it fair and reasonable to do so.

Salary and wage earners

³ If a student loan borrower also has a tax debt or a child support debt, they should refer to SPS 18/04 *Options for relief of tax debt* or SPS XX/XX *Child Support Debt – Requesting an instalment arrangement*.

⁴ and write off an amount payable (less than \$20) by an employer or PAYE intermediary.

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

11. If a borrower is a salary and wage earner, their repayment obligation is determined on a pay period basis. If the Commissioner grants hardship relief by reducing the borrower's repayment obligation, she will issue the borrower with a special repayment deduction rate certificate that varies the rate of payment for a current or future year to reflect the reduced repayment obligation.
12. Relief is also available via a repayment exemption for full-time students who also work and earn under the annual repayment threshold. An exemption applies only to borrowers' income from salary or wages or pre-taxed income, and other untaxed income less than \$1,500, less than the annual repayment threshold. Eligible borrowers may request an exemption so that their earnings do not have student loan repayment deductions made by an employer, when their pay period earnings would otherwise prompt loan repayments.
13. The borrower will need to give the certificate to their employer who can then apply a reduced rate for, or exemption from, a student loan repayment.
14. The amount not collected because of a repayment rate reduction will be added back to the loan balance.

Income from other sources

15. If a borrower receives income from other sources (other than or in addition to their salary and wages), their repayment obligation is the amount of their student loan repayable determined on their adjusted net income for a tax year.
16. If the Commissioner grants hardship relief, the percentage payable by the borrower (for receiving income that is not subject to PAYE) will be reduced.
17. The amount not collected because of a reduction of a repayment obligation will be added back to the loan balance.

Overseas based borrowers

18. For an overseas based borrower, consideration will be given to see if they are entitled to a repayment holiday from their repayment obligations.

Hardship relief: serious hardship or other special reasons

19. Applications for hardship relief are considered on a case-by-case basis. The onus is on the borrower to show that payment of their student loan obligations will cause serious hardship or there is good reason for the Commissioner not to require repayment of their full student loan repayment obligation for a period.

Serious hardship

20. If the Commissioner is satisfied a repayment obligation will cause serious hardship to a borrower or there are special reasons that make it fair and reasonable to provide relief, the Commissioner may:
 - refund⁵ any amount that was paid that is considered more than a borrower can afford to pay without causing hardship; and/or

⁵ However, any overpayment of a loan repayment obligation for years prior to the year preceding the current year, are not refundable to the borrower and will be offset against the student loan balance (see section 122(2)).

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

- adjust the repayment obligation amount to what the borrower can afford without causing serious hardship.
21. The Act does not provide a definition of “serious hardship”. However, section 154 (applications for instalment arrangement) of the Act does refer to section 177A of the Tax Administration Act 1994 (the “TAA”), which provides what considerations should be considered when applying the serious hardship provisions in the TAA.
22. The TAA sets out a list (although not exhaustive) of circumstances that would indicate a taxpayer is experiencing significant financial hardship because of:
- a serious illness suffered by the taxpayer or the taxpayer's dependant(s); or
 - the taxpayer's inability to meet:
 - minimum living expenses according to normal community standards; or
 - the cost of medical treatment for an illness or injury of the taxpayer or the taxpayer's dependant(s); or
 - the cost of education for the taxpayer's dependant(s).
23. The Commissioner may also consider other factors that may be relevant in determining whether a taxpayer may be experiencing serious hardship.

Other special reasons

24. The Commissioner can grant relief from a repayment obligation if satisfied there are “other special reasons” that make it fair and reasonable to do so.
25. Providing relief because a borrower perceives their repayment obligation as unfair or unreasonable, is not a sufficient reason to apply the “other special reason” relief without first asking how the unfair or unreasonable situation, lead to hardship.
26. Consideration of what is fair and reasonable should have regard to the perception of other borrowers who are meeting their repayment obligations.

Examples of relief under “serious hardship” and “other special reasons”

Example One

Relief is likely to be granted under “serious hardship” where a borrower's partner (the household primary income earner) experiences a severe health problem and is on medical leave without any income for 8 months to recuperate. In the interim, their partner (a student loan borrower) claims hardship as they struggle to support a family household and extra costs of medical treatment, on their modest wage income. After looking at the borrower's financial situation and being satisfied no other payment option is available, the Commissioner will likely agree hardship is being experienced and provide relief from their current loan repayment obligation.

The borrower is required to advise the Commissioner of any change or improvement to their financial circumstances that impact on their ability to make loan repayments.

Example Two

Ruth's neighbourhood is isolated by a road closure and communications network blackout caused by a severe regional weather event. She was unable to make a student loan repayment as a consequence of not being able to arrange a bank payment. Relief may be granted under the “other special reasons” provision if a

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

borrower can show they have been impacted by a recognised adverse event, or a declared state of emergency and the Commissioner is satisfied that they have been unable to meet their repayment obligation due to that event.

However, if an adverse event did not directly impact on a borrower's ability to meet their repayment obligation (for example the borrower was on vacation outside the affected region), then the Commissioner is unlikely to provide relief under the "other special reasons" provision.

Example Three

Relief is unlikely under the "other special reasons" where a borrower has access to savings, but they intend to use those funds as a deposit to purchase a house. In considering this, the Commissioner will consider that other borrowers would have reduced savings as a consequence of meeting their repayment obligations.

Entering into an instalment arrangement

27. As noted above, borrowers are encouraged to contact Inland Revenue early so that relief options can be discussed, particularly as late payment interest is charged on defaulted repayment obligations. Early contact may minimise late payment interest charged on any amount that remains unpaid after the due date for payment.
28. When a borrower complies with an agreed instalment arrangement, a lower late payment interest rate will apply to the unpaid amount for each month while an instalment arrangement applies. The rate of the late payment interest and the reduction varies each year depending on the student loan interest rate.
29. The Commissioner may agree to an instalment arrangement where a borrower can demonstrate that they will experience hardship if they are required to pay their repayment obligation in full but can make a partial payment. The Commissioner is only able to enter into an instalment arrangement to the extent that it does not place the borrower into serious hardship.
30. The Act imposes no time limit on when an instalment arrangement must be completed. However, the Commissioner considers that instalment arrangements should be for as short a period as possible without causing serious hardship to a borrower.
31. When the Commissioner enters into an instalment arrangement, the terms will be confirmed with the borrower to ensure that both parties clearly understand their obligations. Confirmation will usually be made using the same method of communication that a borrower used for their application. However, for more complex cases it will be preferable to issue a letter which sets out the obligations and agreed terms for future reference by the borrower.
32. A borrower may renegotiate an instalment arrangement at any time. However, the Commissioner may only do so after two years have elapsed from the date the instalment arrangement was entered.

Refund any amount paid

33. The Commissioner may refund any amount paid to meet a student loan repayment obligation, limited to the current tax year and the previous tax year, where that repayment will cause serious hardship, or there are other special reasons that would make it fair and reasonable to make a refund.

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

Relief from late payment interest and penalties

34. A penalty and late payment interest may be imposed if a borrower does not meet their student loan repayment obligations in full and on-time. Late payment interest will also compound monthly until the arrears are paid.
35. Upon application, and depending on the borrower's circumstances, the Commissioner can cancel some or all of the late payment interest if it would be equitable to do so. The borrower's consolidated loan balance will be reduced by the amount that has been cancelled.
36. The Commissioner will only consider an application for the cancellation of penalty and late payment interest once the initial repayment obligation has been paid.
37. The Commissioner will cancel a penalty and late payment interest when it is considered equitable to do so, after looking at the reasons for late payment. For example, penalty and late payment interest may be cancelled when a payment default was:
 - the result of a genuine error;
 - beyond the control of the borrower or the borrower's agent; or
 - any other situation in which the Commissioner considers it is equitable to do so.
38. When considering an application to cancel a penalty and late payment interest, the Commissioner will consider the borrower's previous loan repayment record, including whether they have paid their student loan repayment obligations as soon as practicable. The borrower's overall loan compliance history will also be a factor in deciding whether to cancel late payment interest.

Consideration of requests for relief

39. Where it is apparent a borrower can pay overdue repayment obligations immediately, the Commissioner will not enter into an arrangement. For example, if the borrower has access to investment funds, beneficial interests, shareholder current accounts or trusts, the Commissioner expects those funds will be used to pay the overdue repayment obligation. A decision will be based on the financial information provided by a borrower along with any further enquiries the Commissioner considers necessary.
40. The Commissioner will look at all options available for collection of unpaid repayment obligations when considering a request for relief. Options may include requesting that the borrower sells property or arranges other finance to pay their unpaid repayment obligations more promptly.
41. Despite any application for hardship relief, the Commissioner may make a counter offer based on the information available and what is considered appropriate for a borrower's circumstances.
42. A borrower can apply for the cancellation or remission of a penalty and late payment interest imposed on any student loan repayment obligation. The Commissioner will look at the circumstances of each case and, if the Commissioner thinks it equitable to do so, she may grant relief.

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

43. If the Commissioner is satisfied that meeting a repayment obligation will cause serious hardship to a borrower or there are special reasons that make it fair and reasonable to provide relief, the Commissioner may:
 - refund⁶ any amount that had been paid that is considered more than a borrower should have been expected to pay without causing hardship, and/or
 - reduce the amount that must be paid, and so enable the borrower to meet their adjusted repayment obligation.
44. The unpaid balance of the original student loan repayment obligation that is not recovered when providing hardship relief, remains as part of the loan account.
45. When the Commissioner agrees to provide relief, the terms and details of the adjusted student loan repayment obligation and other matters (eg, refunds, changed tax code for PAYE purposes) will also be confirmed, with a borrower or a nominated contact person, via telephone or myIR Secure Online Services.

Reviewing a decision

Change in circumstances (for a reduced payment obligation)

46. Borrowers, who are under a current hardship relief arrangement, must notify the Commissioner if there is a change in their circumstances. The Commissioner may review any decision to grant relief if it is considered there has been a material change in the circumstances upon which the relief had been agreed.
47. A change in circumstances, includes any information given to the Commissioner that is no longer correct, or likely impact on whether hardship relief will continue to be granted. Upon review, all or part of a repayment obligation may be reinstated by the Commissioner.

Misleading or false information

48. The Commissioner may cancel an instalment arrangement if a borrower had provided false or misleading information, or a borrower is not meeting their obligations under an instalment arrangement.

Service feedback

49. If a taxpayer is concerned that their circumstances have not been given proper consideration, they should raise their concern with the officer handling their request and ask for the decision to be reviewed.
50. If a taxpayer is still not satisfied with the level of service they receive, they can obtain more information about the Inland Revenue Complaints Management Service at www.ird.govt.nz (search keywords: complaints and disputes) or phone 0800 274 138 Monday to Friday between 8am and 5pm.

Challenges

⁶ However, any overpayment of a loan repayment obligation for years prior to the year preceding the current year, are not refundable to the borrower and will be offset against the student loan balance (see section 122(2)).

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

51. A borrower may challenge a decision by the Commissioner not to grant relief or enter into an instalment arrangement by commencing proceedings, on the ground that the decision is not fair and reasonable.

Significant over-payments

52. When payments by a borrower exceed their repayment obligation, the excess payment will be offset against any other student loan amounts that are due but remain unpaid. Any remaining over-payment will then be offset against the borrower's loan balance.
53. Borrowers can also request that a significant overpayment be refunded to them. Alternatively, borrowers may also choose to apply all or part of an excess payment to satisfy a future repayment obligation.

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY
Deadline for comment 24 December 2019. Please quote ED0218

APPENDIX: Relevant provisions of legislation

Student Loan Scheme Act 2011

The following sections of the Tax Administration Act 1994 are particularly relevant to the relief provisions. For the most recent version of the Act, and any other provisions, see www.legislation.govt.nz

122 Exception to general rule if repayment obligations for prior tax years reassessed

- (1) Subsection (2) applies if, upon investigation by the Commissioner of a borrower's repayment obligations for 2 or more prior tax years (the **investigated years**),—
 - (a) the Commissioner assesses the borrower as having a repayment obligation for an investigated year for which no assessment has been made previously, or alters an assessment for an investigated year so as to increase the repayment obligation; and
 - (b) the Commissioner also identifies that an excess repayment has been made for an investigated year.
- (2) If this subsection applies,—
 - (a) the Commissioner may, to the extent that he or she considers equitable, offset the excess repayment against any repayment obligation due for any of the investigated years; and
 - (b) sections 120 and 121 apply only to so much of the excess repayment (if any) as is not offset against a repayment obligation in accordance with paragraph (a).
- (3) Subsection (2) applies despite anything to the contrary in this Act.

141 Late payment interest reduced if instalment arrangement complied with

- (1) This section applies if—
 - (a) a borrower is liable to pay late payment interest on an unpaid amount under section 139; and
 - (b) the borrower has entered into an instalment arrangement in relation to the unpaid amount in accordance with section 154.
- (2) For each month that the borrower meets his or her obligations under the instalment arrangement, any late payment interest that the borrower is liable to pay on the unpaid amount for that month must be calculated as if, in the definition of late payment interest rate in section 139(3), the reference to base interest rate plus 4% were a reference to base interest rate plus 2%.
- (3) However, subsection (2) applies only to the days in a month during which an instalment arrangement applies.

144 Power of Commissioner in relation to small amounts

- (1) The Commissioner may refrain from—
 - (a) issuing a notice of assessment in relation to a repayment obligation that is payable by a borrower for a tax year if the amount payable is less than \$20; or
 - (b) *[Repealed]*
 - (c) collecting a repayment obligation (or part of a repayment obligation) that is payable by a borrower for a tax year if the amount payable is less than \$20; or
 - (d) *[Repealed]*
 - (e) collecting, and may write-off, any amount that is payable by an employer or PAYE intermediary for any period under this Act if the amount payable is \$20 or less.
- (2) The Commissioner may refrain from collecting payment of a repayment obligation (or part of a repayment obligation) if that repayment obligation (or part of a repayment obligation)—
 - (a) is \$20 or more but less than \$334; and
 - (b) has not been paid by the due date (as that term is defined in section 5(2)).
- (3) Any amount that the Commissioner refrains from collecting—
 - (a) under subsection (1)(c) is written off:
 - (b) under subsection (2) is not written off and is added to the borrower's loan balance.
- (4) This section applies despite anything to the contrary in this Act.

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

145 Application for different types of relief for borrower

- (1) A borrower, or a person on a borrower's behalf, may apply for 1 or more of the following:
 - (a) relief from late payment interest (see section 146):
 - (ab) relief from a penalty (see section 146A):
 - (b) hardship relief for the current tax year, any prior tax year, or the next tax year (see section 147):
 - (c) financial relief by entry into an instalment arrangement (see section 154).
- (2) An application under subsection (1)(a) must be made by notifying the Commissioner in a manner acceptable to the Commissioner.
- (3) An application under subsection (1)(b)—
 - (a) must be made by notifying the Commissioner in a manner acceptable to the Commissioner:
 - (b) that relates to hardship relief for the next tax year must be made on or before 31 March in the tax year that immediately precedes the tax year for which relief is sought.
- (4) An application under subsection (1)(c) must be made in accordance with section 154(1).

146 Commissioner may grant relief from late payment interest

- (1) Subsection (2) applies—
 - (a) if a borrower has been charged with late payment interest; and
 - (b) regardless of whether that late payment interest has been paid, either in whole or in part; and
 - (c) if an application is made under section 145(1)(a) for relief from late payment interest.
- (2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the late payment interest as the Commissioner considers equitable.
- (3) If late payment interest is cancelled,—
 - (a) the borrower's consolidated loan balance is decreased by the amount of the cancelled late payment interest; and
 - (b) if the late payment interest has been added to the borrower's unpaid amount under section 139 (whether calculated at the full late payment interest rate in accordance with section 139(2) or the reduced late payment interest rate in accordance with section 141), the borrower's unpaid amount is decreased by the amount of the cancelled late payment interest; and
 - (c) any payment made in excess of the remaining amount of late payment interest payable (if any) by the borrower (an **excess payment**) must be offset against the borrower's consolidated loan balance as follows:
 - (i) first, against any unpaid amount; and
 - (ii) secondly, against the loan balance; and
 - (d) the Commissioner must refund any remaining excess payment to the borrower (see sections 199 and 200).

146A Commissioner may grant relief from penalties

- (1) Subsection (2) applies—
 - (a) if a borrower has been charged with a penalty; and
 - (b) regardless of whether that penalty has been paid, either in whole or in part; and
 - (c) if an application is made under section 145(1)(ab).
- (2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the penalty as the Commissioner considers equitable.
- (3) For the purposes of this section, **penalty**—
 - (a) means—
 - (i) a late notification penalty:
 - (ii) an underestimation penalty:

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

(iii) a student loan shortfall penalty; but

(b) despite paragraph (a)(iii), does not include a student loan shortfall penalty where, for the purposes of the application of section 159 (as set out in section 158), the shortfall penalty for which the borrower was liable was imposed under section 141D or 141E of the Tax Administration Act 1994.

147 Hardship relief for any tax year

(1) If an application is made under section 145(1)(b) for hardship relief, the Commissioner may, for any period the Commissioner considers equitable, decrease a borrower's repayment obligation if the Commissioner—

(a) is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower; or

(b) considers that there are other special reasons that make it fair and reasonable to do so.

(2) However, the Commissioner must not—

(a) refund any amount that was deducted or paid to meet a repayment obligation for a tax year prior to the current tax year other than the tax year that immediately precedes the current tax year; or

(b) decrease a repayment obligation if—

(i) a student loan shortfall penalty has been imposed on a borrower under section 159 in relation to the tax year that the repayment obligation relates to; and

(ii) for the purposes of the application of section 159 (as set out in section 158), the shortfall penalty for which the borrower was liable was imposed under section 141D or 141E of the Tax Administration Act 1994.

148 Special deduction rate certificate for hardship relief

(1) Subsection (2) applies if—

(a) the Commissioner decreases the repayment obligation of a borrower under section 147; and

(b) the borrower derives salary or wages.

(2) The Commissioner may issue a special deduction rate certificate that—

(a) specifies a special deduction rate and the repayment code to be used that reflects the Commissioner's decision under section 147; and

(b) specifies the period for which the special deduction rate is to apply to the borrower; and

(c) requires the borrower's employer or PAYE intermediary to make deductions from the borrower's salary or wages at the special deduction rate.

(3) The issue of a special deduction rate certificate may form part of or all of the means by which a borrower's repayment obligation is decreased under section 147.

149 Issue and application of special deduction rate certificate

(1) If the Commissioner issues a special deduction rate certificate under section 148, the Commissioner must give a copy of the certificate to the borrower.

(2) The special deduction rate certificate revokes all other special deduction rate certificates previously issued in relation to the borrower under section 45 or 148.

150 Time when special deduction rate ceases to apply

The special deduction rate applies until the earlier of—

(a) the end of the period specified in the special deduction rate certificate; or

(b) the date on which the Commissioner notifies the employer in writing otherwise; or

(c) the date on which the borrower notifies the employer otherwise.

151 Effect of Commissioner's decision under section 147

An amount that, as a result of a decision under section 147, the Commissioner refunds to, or does not collect from, a borrower—

(a) is not written off; and

(b) remains part of the borrower's loan balance; and

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

- (b) is not an unpaid amount.

152 Borrowers must notify Commissioner of change of circumstances

A borrower who applies for hardship relief under section 145(1)(b) must notify the Commissioner, and provide details, as soon as practicable if there is a change in the borrower's circumstances that—

- (a) means that any information supplied to the Commissioner under section 145 is incorrect or inaccurate; or
- (b) may affect whether or not a borrower would have been, or will continue to be, granted hardship relief under section 147.

153 Commissioner may review grant of hardship relief

- (1) The Commissioner may review any decision he or she made to grant hardship relief to a borrower.
- (2) If for any reason the Commissioner considers that the circumstances for the grant of that hardship relief have changed, the Commissioner may do either or both of the following:
 - (a) require the borrower to take any action that is required to reverse the effects of the hardship relief that was granted to the borrower;
 - (b) reinstate all or part of the repayment obligation that would have applied to the borrower if hardship relief had not been granted to the borrower, and require payment of any amount that would have been due during the relevant tax year.

154 Application for instalment arrangement

- (1) An application for entry into an instalment arrangement—
 - (a) may be made at any time in relation to an unpaid amount or an amount that is not yet due; and
 - (b) must be made in accordance with section 177(1)(b) of the Tax Administration Act 1994.
- (2) Sections 177(1)(b) and (3) to (5), 177A, 177B, and 177CA of the Tax Administration Act 1994 apply to an application under subsection (1) and to an instalment arrangement granted as a result of that application, as far as applicable and with all necessary modifications, as if—
 - (a) every reference to a taxpayer included a borrower; and
 - (b) every reference to tax included an unpaid amount.

Tax Administration Act 1994

177A How to apply serious hardship provisions

- (1) Subsections (2), (3), and (4) provide the rules for the Commissioner to decide (the **decision**) whether,—
 - (a) for the purposes of section 176, recovery of outstanding tax would place a taxpayer, being a natural person, in serious hardship;
 - (b) for the purposes of section 177, the Commissioner may accept the taxpayer's request for financial relief on the basis of a claim that recovery of the taxpayer's outstanding tax or a relief company's outstanding tax would place the taxpayer, being a natural person, in serious hardship;
 - (c) for the purposes of section 177B, an instalment arrangement entered into by a taxpayer or a relief company would place the taxpayer, being a natural person, in serious hardship;
 - (d) for the purposes of section 177C, recovery of the outstanding tax would place the taxpayer, being a natural person, in serious hardship.
- (2) The Commissioner makes a decision under this section by determining whether financial information, after allowing for payment of a relevant amount of outstanding tax, and subject to subsections (3) and (4), shows that the taxpayer would, after the application under section 177 (the **request**), likely have significant financial difficulties because, after the request,—
 - (a) the taxpayer or their dependant has a serious illness;
 - (b) the taxpayer would likely be unable to meet—
 - (i) minimum living expenses estimated according to normal community standards of cost and quality;
 - (ii) the cost of medical treatment for an illness or injury of the taxpayer, or of their dependant;
 - (iii) the cost of education for their dependant;

EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

Deadline for comment 24 December 2019. Please quote ED0218

- (c) other factors that the Commissioner thinks relevant would likely arise.
- (3) Compliance with, and non-compliance with, tax obligations must not be considered by the Commissioner when making a decision under this section.
- (4) The Commissioner must use only financial information that the Commissioner has at the date on which the decision is made.