

STANDARD PRACTICE STATEMENT

# Extension of time applications from customers without tax agents

Issued: 8 August 2024

SPS 24/02

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 updates and replaces SPS 09/03 *Extension of time applications from taxpayers without tax agents*.

**START DATE**

05 August 2024

**REPLACES**

- **SPS 09/03:** Extension of time applications from taxpayers without tax agents

## Table of Contents

Introduction.....	2
Application.....	2
Definitions.....	2
Standard practice.....	3
Summary.....	3
Detailed discussion.....	3
Request for an extension of time .....	4
Timing.....	5
The Commissioner’s consideration .....	5
Period of Extension.....	7
Customers whose tax agent no longer qualifies as a tax agent .....	7
Notification and confirmation - extension of time granted or declined.....	7
Late filing penalties .....	8
Legislative references.....	9

## Introduction

This Statement sets out certain practices that the Commissioner will apply when considering applications for an extension of time to file an income tax return from customers who are not represented by a tax agent.

All legislative references in this Statement refer to the Tax Administration Act 1994 ("TAA"), unless otherwise specified.

## Application

This Statement applies from *05 August 2024* and replaces SPS 09/03 *Extension of time for customers without a tax agent* published in *Tax Information Bulletin* Vol 21, No 9 (December 2009).

This Statement affects the following:

- A customer who is not represented by a tax agent; or
- A customer whose tax agent no longer qualifies as a tax agent; or
- Is a tax agent without a current extension of time.

## Definitions

The following terms are used throughout this Statement:

- **Tax agent:** A person is eligible to be a tax agent under section 124C(3) when they prepare income tax returns for 10 or more persons, and is either one of the following:
  - (i) a person carrying on a professional public practice;
  - (ii) a person carrying on a business, occupation, or employment in which returns of income are prepared and filed; or
  - (iii) the Māori Trustee
- **Due date:** The date by which an annual income tax return must be filed as prescribed by section 37(1) of the TAA.
- **Extension of time:** an arrangement by which the Commissioner extends the due date for filing an annual income tax return to a date set by the Commissioner.

## Standard practice

### Summary

1. A customer without a tax agent may request for an extension of time to file their annual income tax return. The best way to make a request is via myIR or by contacting Inland Revenue by phone.
2. A tax agent does not include a nominated person or other representative that does not fall within the definition of a tax agent as defined under section 124C(3) of the TAA.
3. Customers who do not file a return by the due date may be liable for a late filing penalty. Therefore, any requests for an extension of time should be made before the due date for filing the return, or the expiry of an existing extension of time arrangement.
4. In deciding whether to grant an extension of time, the Commissioner will take into account the following:
  - The reasons for requesting an extension of time;
  - The customer's filing history; and
  - If previous extension of time arrangements had been adhered to.
5. An extension period that is appropriate to that particular customer's circumstances may be granted.
6. The customer will be notified in writing of the Commissioner's decision whether or not an extension of time is granted.
7. A customer whose tax agent no longer qualifies as a tax agent is entitled to the same extension of time that previously applied to their tax agent. Section 37(4) and (5) of the TAA allows the Commissioner to give the clients of tax agents extensions of time in which to file income tax returns up to, but not beyond, 31 March of the following year.

### Detailed discussion

8. Customers who are required to file an annual income tax return must file it by the due date as prescribed by section 37(1) TAA. For customers who have a late balance date, the due date is on the 7th day of the 4th month after the end of the customer's income year. For all other customers, including those customers with an early balance date, the

due date is 7 July of each year. For more information on balance dates see [SPS 24/01: Requests to change a balance date \(ird.govt.nz\)](#).

9. Under section 37(1B) an annual income tax return includes a final account that is prepopulated. This is where the Commissioner automatically issues income tax assessments.
10. A customer may apply for an extension of time to file their income tax return and the Commissioner may agree to extend the date for filing the return, where he is satisfied that the customer is unable to file the return by the prescribed due date.
11. Inland Revenue has recognised that it may be difficult for tax agents to prepare all of their clients' returns by the due date. Therefore, tax agents are generally granted an extension of time. In most cases the clients of a tax agent will automatically acquire the same extension of time status as their tax agent.
12. To ensure those customers who are not represented by a tax agent are not disadvantaged, Inland Revenue will consider applications for an extension of time on a case by case basis. The particular circumstances of the customer will be taken into consideration as far as the law permits.
13. Under section 37(3B) an extension of time can be advised by the Commissioner due to an Inland Revenue digital platform system issue that hinders or disadvantages a customer from providing the required return or income information.
14. In some circumstances a tax agent may no longer qualify as a tax agent or may lose their extension of time. In this situation a customer can apply for an individual extension of time. Section 37(4B) of the TAA allows the Commissioner to extend those customers' filing date to 31 March on or after the original extension date.
15. The due date for filing an income tax return for all customers, with or without a tax agent, cannot be extended beyond 31 March of the following year as per section 37(5) of the TAA.
16. Customers who do not file a return by the due date may be liable to a late filing penalty. Therefore, customers are encouraged to request an extension of time before the due date, or before an existing extension of time arrangement expires.

## Request for an extension of time

17. Customers can make a request for an extension of time in the following ways:
  - By sending a request using myIR;
  - Phone; or

- Post.
18. When making a request, customers should state clearly that they are requesting an extension of time.
  19. To ensure that Inland Revenue is able to consider the request for an extension of time, the following information should be provided:
    - The customer's name and IRD number;
    - The type of return required to be filed (e.g. IR3);
    - The return period to which the extension applies;
    - The length of the extension of time required; and
    - The reasons for requesting an extension of time.

## Timing

20. A request for an extension of time should be made on or before the due date for filing the return. However, the legislation confers a discretionary power to the Commissioner to accept applications after the due date in some cases, or class of cases.

## The Commissioner's consideration

21. An extension of time may be granted if the Commissioner is satisfied that the customer will be unable to file a tax return by the due date. Each request for an extension of time will be considered on a case by case basis. Reasonable consideration will be given to the circumstances of the customer and whether an extension of time is appropriate for that customer.
22. In determining whether it is appropriate to grant an extension of time, the Commissioner will consider the following:
  - a. The reasons for requesting an extension;
  - b. The customer's return filing history; and
  - c. If previous extension of time arrangements had been adhered to.

### *Reasons for requesting an extension*

23. Examples of circumstances that the Commissioner may consider appropriate for granting an extension of time include:
  - a. The customer is unable to obtain records eg:

- Unable to obtain the necessary information to file the return. This includes waiting on information from Inland Revenue,
  - A significant weather event
- b. Dependent on other income eg: Waiting on the finalisation of accounts for a related customer or entity
  - c. Customer is sick or injured
  - d. Customer is overseas. Developments in technology mean that even when customers are overseas they will be able to file electronically. A planned holiday is unlikely to justify an extension of time. However, where a customer is overseas and there are other factors beyond their control (such as, illness in the family, Government imposed restrictions on travel, adverse events, and so on) then the Commissioner may consider it appropriate to grant an extension.
24. These are merely some examples of circumstances in which the Commissioner may grant an extension of time. There may be other situations under which an extension of time may be appropriate.

### ***Return filing history***

25. The Commissioner will also take into account the customer's return filing history in considering whether to grant an extension of time.
26. If the customer has other outstanding returns it is unlikely that an extension of time will be granted for the current year's return, unless there are legitimate reasons for not filing the outstanding returns for the previous years.
27. It should be noted that any extension of time agreed to would only apply to the current year's return and not to the other outstanding returns. The prescribed maximum period for an extension relating to the previous years' returns would have elapsed in most cases and the Commissioner cannot grant an extension beyond that prescribed date. (Refer to "Period of Extension" in paragraphs 29 to 31).

### ***Previous extension of time arrangements***

28. Where a customer has previously been granted an extension of time but has failed to adhere to that arrangement, it is unlikely that the Commissioner will agree to a further extension of time unless there are legitimate reasons for the customer's failure to adhere to the earlier arrangement.

## Period of Extension

29. The maximum period for an extension of time that can be granted to any customer is 31 March of the following year as per section 37(5) of the TAA. This applies to customers with a standard balance date and a non-standard balance date. For example, the final extension date that the Commissioner may grant to file a return relating to the 2023/24 income year is 31 March 2025.
30. The Commissioner will not necessarily agree to the maximum extension period in every case. The period of extension will be set after giving reasonable consideration to the reasons for the delay and the circumstances of the customer.
31. Where an extension of time has been granted and the customer is subsequently unable to meet the new due date, then before the expiry of the extension of time they should request a further extension to avoid a late filing penalty. Again, there must be legitimate reasons for a further extension of time to be granted.

## Customers whose tax agent no longer qualifies as a tax agent

32. In most cases customers who are represented by a tax agent will automatically acquire the same extension of time given to their tax agent. However, if that tax agent ceases to be a tax agent before the extension of time expires, the Commissioner is required to extend the filing date for those customers to 31 March on or after the original extension date.
33. For example, a tax agent has an extension of time to file their client's tax returns by 31 March 2024. The tax agent is removed as a tax agent on 30 November 2023 and their clients are now required to file their own returns. Those customers will be granted an extension of time to file their tax returns by 31 March 2024.

## Notification and confirmation - extension of time granted or declined

34. Customers requesting an extension of time over the telephone will usually be notified immediately whether an extension is granted or declined.
35. Requests made via myIR will receive a response via myIR.
36. In all cases, once a decision has been made, Inland Revenue will write to the customer confirming the granting or declining of an extension of time.



## Late filing penalties

37. A late filing penalty may be imposed if a return is not filed by the due date, or by the date agreed to in an extension of time arrangement.
38. Should the customer fail to file the return by the due date, or the agreed date, the Commissioner will first give the customer a 30 day notice of an intention to impose a late filing penalty.
39. The late filing penalty will generally not be reversed if it has been imposed before an extension of time was granted.
40. However, the late filing penalty may be remitted in certain circumstances. The criteria for remitting late filing penalties are contained in sections 183A and 183D.
41. Remission applications under sections 183A and 183D will only be considered when the return relevant to the remission request has been filed and any tax due has been paid.
42. For more information on late filing penalties and remission of penalties, see SPS 19/04 - [Late filing penalties \(ird.govt.nz\)](#) Late Filing Penalty and SPS 18/04 – [Options for relief from tax debt \(ird.govt.nz\)](#) (or any subsequent replacements of these SPS's).

This Standard Practice Statement is signed on 5 August 2024.

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**Matthew Evans**

Technical Lead, Technical Standards

## Legislative references

The relevant legislative provisions are sections 37, 183A, and 183D

### Section 37 – Dates by which annual returns to be furnished

- (1) The annual returns of income required under this Act shall be furnished to the Commissioner as follows:
  - (a) [Repealed]
  - (b) in the case of any taxpayer with a late balance date, not later than the seventh of the month which is the fourth month after the end of the taxpayer's corresponding income year:
  - (c) in all other cases, not later than 7 July in each year.
  
- (1B) For the purposes of this section, an annual return of income for an individual to whom Part 3, subpart 3B applies, means a final account described in section 22D(6) containing the income information of the individual for the tax year.
  
- (2) The Commissioner shall give public notice of the days by which the returns are required to be furnished by publishing the notice in such manner as the Commissioner thinks fit; but the omission to give any such notice shall not affect the liability of any person to furnish any return within the time prescribed by this section in that behalf.
  
- (3) Subject to subsection (5), where any taxpayer satisfies the Commissioner that the taxpayer is unable to furnish the required return by the due date required under this section, the Commissioner, upon application by or on behalf of the taxpayer on or before that date, or within such further period as the Commissioner may allow in any case or class of cases, may extend the time for furnishing the required return to such date as the Commissioner thinks proper in the circumstances.
  
- (3B) Subject to subsection (5), an extension of time to a date advised by the Commissioner is available to a person or a class of persons if—
  - (a) a systems issue arises for an Inland Revenue digital platform resulting in a person or class of persons being prevented from, or being otherwise hindered or disadvantaged in, providing the required return or income information; and
  - (b) a proportionate extension of time is considered proper in the circumstances.
  
- (4) Subject to subsection (5), the Commissioner may extend a tax agent's time for furnishing a return of income for any taxpayer to a date the Commissioner thinks proper in the circumstances, if the Commissioner is satisfied that—

- (a) the tax agent is unable to furnish the return of income on or before the date set by subsection (1); or
  - (b) it would be unreasonable, having regard to the circumstances of the tax agent preparing the return, to require the return to be furnished on or before the date set by subsection (1).
- (4A) If a tax agent has not furnished for a tax year the required number of tax returns by the dates specified by the Commissioner, the Commissioner may:
  - (a) refuse to grant an extension of time under subsection (4) for furnishing 1 or more tax returns that are linked to the tax agent; and
  - (b) cancel any existing extension of time arrangement granted under subsection (4) for the tax years for which the tax agent has not furnished the required number of tax returns by the dates specified by the Commissioner; and
  - (c) cancel any existing extension of time arrangement granted under subsection (4) for 1 or more returns, but not necessarily all returns, for the tax years for which the tax agent has not furnished the required number of tax returns by the dates specified by the Commissioner.
- (4B) If the Commissioner extends under subsection (4) the time for a person listed as a tax agent to furnish a return of income for a taxpayer and the person ceases to be a tax agent before the extension of time would have expired, the Commissioner must extend the taxpayer's time for furnishing the return to a date of 31 March on or after the date that would have applied if the person had continued to be a tax agent.
- (5) For the purposes of subsections (3) and (4),—
  - (a) where the return required to be furnished by any taxpayer is a return for a year ending on 31 March, the time for furnishing that return shall not be extended or further extended to a time later than the 31 March that immediately succeeds that 31 March:
  - (b) where the return required to be furnished by any taxpayer is, by consent of the Commissioner under section 38, a return for a year ending with the date of the annual balance of the accounts of the taxpayer, the time for furnishing that return shall,—
    - (i) where that date is between 30 September and the next succeeding 31 March, not be extended or further extended to a time later than the 31 March next succeeding the 31 March that immediately succeeds that date:

(ii) where that date is between 31 March and the next succeeding 1 October, not be extended or further extended to a time later than the 31 March that immediately succeeds that date.

### **183A - Remission for reasonable cause**

- (1) This section applies to—
- (a) a late filing penalty:
  - (b) a non-electronic filing penalty:
  - (c) a late payment penalty:
  - (d) imputation penalty tax imposed by section 140B:
  - (e) [Repealed]
  - (f) Maori authority distribution penalty tax imposed by section 140CB:
  - (g) a shortfall penalty imposed by section 141AA:
  - (h) a civil penalty imposed under section 215 of the KiwiSaver Act 2006:
  - (i) an employers' withholding payment penalty imposed by section 141ED.
- (1A) The Commissioner may remit the penalty if the Commissioner is satisfied that—
- (a) a penalty to which this section applies arises as a result of an event or circumstance beyond the control of a taxpayer; and
  - (b) as a consequence of that event or circumstance the taxpayer has a reasonable justification or excuse for not furnishing the tax return or their employment income information, or not furnishing their employment income information in a prescribed electronic format, or not paying the tax on time; and
  - (c) the taxpayer corrected the failure to comply as soon as practicable.
- (2) Without limiting the Commissioner's discretion under subsection (1), an event or circumstance may include—
- (a) an accident or a disaster; or
  - (b) illness or emotional or mental distress.
- (3) An event or circumstance does not include—

(a) an act or omission of an agent of a taxpayer, unless the Commissioner is satisfied that the act or omission was caused by an event or circumstance beyond the control of the agent—

(i) that could not have been anticipated; and

(ii) the effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or

(b) a taxpayer's financial position.

### **183D - Remission consistent with collection of highest net revenue over time**

(1) The Commissioner may remit—

(a) a late filing penalty; and

(aa) a non-electronic filing penalty; and

(b) a late payment penalty; and

(bb) a shortfall penalty imposed by section 141AA; and

(bc) a civil penalty imposed under section 215 of the KiwiSaver Act 2006; and

(bd) an employers' withholding payment penalty imposed by section 141ED; and

(c) interest under Part 7—

payable by a taxpayer if the Commissioner is satisfied that the remission is consistent with the Commissioner's duty to collect over time the highest net revenue that is practicable within the law.

(2) In the application of this section, the Commissioner must have regard to the importance of the penalty, and interest under Part 7, in promoting compliance, especially voluntary compliance, by all taxpayers and other persons with the Inland Revenue Acts.

(3) The Commissioner must not consider a taxpayer's financial position when applying this section.