

## Standard practice statement

**SPS 19/03**

## Income equalisation deposits and refunds

### 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 the Commissioner's practice regarding the statutory powers to accept income equalisation deposits for a tax year outside the specified period, and to accept refund applications for a tax year outside the specified period.

Unless specified otherwise, all legislative references in this Statement refer to the Income Tax Act 2007 ("ITA").

### Application

This Statement applies from 4 April 2019 and replaces SPS 17/01 *Income equalisation deposits and refunds* issued in August 2017.

The Statement applies to income equalisation deposits and refunds made under:

- the main income equalisation scheme (under ss EH 3 to EH 36), and
- the thinning operations income equalisation scheme (under ss EH 63 to EH 79).

However, it does not apply to:

- the adverse event income equalisation scheme (under ss EH 37 to EH 62) – repealed effective for income years beginning after 18/03/2019.
- refunds from the main income equalisation account to:
  - persons who retire, die or are made bankrupt (under ss EH 17 to EH 24), or
  - companies that are put into liquidation (under ss EH 25 and EH 26)
- refunds from the thinning operations income equalisation account to companies that carry on a forestry business in New Zealand and are put into liquidation (under ss EH 75 and EH 76).

## Standard Practice

### Summary

#### Deposits

1. Eligible taxpayers may make a deposit into the applicable income equalisation scheme.
2. To be deductible in an accounting year, the deposit must be received by the Commissioner:
  - within the accounting year;
  - within the specified period after the end of the accounting year; or
  - within a time after the end of the specified period for an accounting year that the Commissioner allows in a case or class of cases (a “late deposit”).
3. The taxpayer must, at the time the deposit is made, notify the Commissioner if the deposit is not for the current accounting year.
4. The Commissioner will accept a late deposit where the deposit is provided by the earlier of:
  - one month from the date the taxpayer’s income tax return was filed for an accounting year;
  - one month from the taxpayer’s income tax return due date for an accounting year.
5. In exceptional circumstances, the Commissioner will extend her discretion beyond the timeframe set out in [8]. This is discussed in more detail at [91] to [102].
6. The Commissioner must consider every request to allow a late deposit on a case-by-case basis and will decide whether to accept a deposit for the nominated accounting year after careful consideration of the taxpayer’s particular circumstances.
7. Where the Commissioner declines to allow a late deposit for the accounting year nominated by the taxpayer, the deposit may still be applied to the accounting year the deposit was made in. In this situation, the Commissioner will first contact the taxpayer to give them the option of continuing with the deposit or having it returned to them.
8. The taxpayer is allowed a deduction for a deposit made into the applicable income equalisation scheme for the accounting year that was set out in the taxpayer’s notice, provided it is accepted by the Commissioner for the relevant accounting year. If the taxpayer’s income tax return was filed before the deposit was made, the Commissioner will reassess the return to include the deduction.

#### Refunds

9. An eligible taxpayer may apply for a refund from the applicable income equalisation scheme.

10. A deposit cannot generally be refunded until it has been in the scheme for one year unless specific circumstances apply. However, the Commissioner may allow an early refund where she is satisfied that the early refund is required for a purpose a refund should be given for.
11. A refund within the one-year period can only be allowed when certain legislative criteria are met. The criteria discussed in this statement are:
  - To enable the taxpayer to undertake planned development work;
  - To enable the taxpayer to buy livestock or replacement livestock;
  - To avoid them suffering serious hardship;
  - To do anything else that the Commissioner determines in a case or class of case is a purpose for which a refund should be given.
12. In every case the taxpayer is required to provide evidence to support the reason for the early refund.
13. A refund from the scheme is income in the income year in which the Commissioner receives the application except where the taxpayer chooses the income to be allocated to an accounting year.
14. To be allocated as income in an accounting year, the application must be received by the Commissioner:
  - within the accounting year; or
  - within the specified period after the end of an accounting year; or
  - within a time after the end of the specified period for an accounting year that the Commissioner allows in a case or class of cases (a "late application").
15. If the application for a refund is made within or after the specified period for an accounting year the taxpayer must, at the time of applying for the refund, notify the Commissioner that they elect the refund be allocated as income to that accounting year.
16. The Commissioner will accept a late application where the application is received by the earlier of:
  - one month from the date the taxpayer's income tax return was filed for an accounting year; or
  - one month from the taxpayer's income tax return due date for an accounting year.
17. In exceptional circumstances, the Commissioner will extend her discretion to accept a late application beyond the timeframe set out in [16]. This is discussed in more detail at [91] to [102].
18. The Commissioner must consider every request to allow a late application on a case-by-case basis and decide whether to allow the refund for the requested accounting year after careful consideration of the taxpayer's particular circumstances.

19. Where the Commissioner declines a late application for the accounting year elected by the taxpayer, the refund may still be applied to the accounting year the application was made in. In this situation, the Commissioner will first contact the taxpayer to give them the option of continuing with or withdrawing the application for a refund.
20. The taxpayer must return the income equalisation refund as income in the accounting year nominated in the taxpayer's notice, provided it is accepted by the Commissioner for the relevant accounting year. If the taxpayer's income tax return was filed before the application was made, the Commissioner will reassess the return to include the income equalisation refund as income.
21. The Commissioner must issue a refund of a deposit that is in a person's income equalisation account at the end of five years after the end of the accounting year the deposit was made for.

## Background

22. The income equalisation scheme was introduced in 1965. At the time of introduction of the scheme it was stated that it would:
  - enable farmers to iron out rates of tax due to rises and falls in income;
  - encourage farmers to put aside part of their income in good years and to use this money for farm development in years when farm income falls;
  - help to remove a cause of inflation and therefore help to maintain a steadier rate of economic growth.
23. The scheme enables eligible taxpayers to:
  - make income equalisation deposits with the Commissioner; and
  - claim a deduction against their income in the accounting year; or
  - the deposit is made in, or
  - requested by the taxpayer in their notice to the Commissioner when they make a deposit, provided the request is accepted by the Commissioner.
24. When a refund is made from the scheme, the amount is included as part of the taxpayer's income in the accounting year:
  - in which the application for the refund is received by the Commissioner; or
  - elected by the taxpayer.
25. Since the implementation of the scheme use-of-money interest has been introduced. Farmers are not usually in a position to know their final financial position until after liability for use-of-money interest applies. Also, many farmers do not receive the bulk of their income until near the end of their tax year, so they have not had the use of that money throughout the year. The income equalisation scheme provides an avenue for farmers to limit their exposure to use-of-money interest.

## Detailed discussion

### Meanings

The following meanings describe terms used in this statement.

#### *Accounting year*

26. "Accounting year" is defined under s YA 1 and means a tax year or another 12-month period that ends with the taxpayer's balance date.
27. The definition of "accounting year" for a company also includes:
  - a period, shorter than twelve months, that is the period accounts are prepared for, including under the international tax rules, because of the formation of the company or the termination of the company's existence; and
  - a period, shorter or longer than twelve months, that is the period accounts are prepared for, including under the international tax rules, because of the company or a person adopting a new accounting balance date under ss EX 25 or EX 69.

#### *Eligible taxpayers*

28. "Eligible taxpayers" may reduce their net income for a tax year by making an income equalisation deposit into the applicable income equalisation scheme with the Commissioner pursuant to s EH 1(1).
29. Section EH 3(1) provides that eligible taxpayers in respect of the main income equalisation scheme are:
  - persons who carry on a farming or agricultural business on land in New Zealand; or
  - persons who carry on a fishing business; or
  - persons who derive income from forestry, but are not a company, public authority, Māori authority, or an unincorporated body.
30. Section EH 63(1) provides that eligible taxpayers for the thinning operations income equalisation scheme are companies that carry on a forestry business on land in New Zealand and derive income from carrying out thinning operations on the land.
31. The thinning operations income equalisation scheme does not apply to natural persons.

#### *Serious hardship*

32. The term "serious hardship" is not defined in the legislation. Although the ordinary meaning of the words "serious" and "hardship" would require that there is a degree of suffering or privation that is relatively significant in the circumstances, the historical background to the scheme suggests that "serious hardship" should not be an unduly high standard to satisfy.
33. However, a taxpayer must still show evidence that an early refund would be used to avoid them suffering serious hardship.

34. This would include a situation where, if the refund were not made, the future farming operation may be seriously jeopardised, or the farmer and their family may suffer significant hardship. Examples of this could include the need to dispose of breeding stock or being unable to undertake essential farm maintenance. Note that the Commissioner considers that deferring the application of fertiliser for one year would not seriously jeopardise future farming operations.
35. Factors likely to count against an early refund to avoid serious hardship are:
- There are alternative and more traditional sources of credit available; or
  - The early refund, or the saving as a result of an early refund, will effectively be spent on things other than maintaining the farming operations or keeping debt lower (buy a new vehicle or spending more to upgrade machinery than is reasonable, for instance).

#### *Specified period*

36. "Specified period" is defined for the purposes of the applicable income equalisation schemes under ss EH 36, EH 79 and YA 1 and means the shorter of:
- the period of six months after the end of the accounting year that corresponds to the tax year;
  - the period from the end of the accounting year that corresponds to the tax year to the date one month after the date the person must, under s 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year.

#### **Examples**

##### ***Calculating the specified period with an extension of time arrangement***

In the case of a taxpayer with a balance date of 30 June 2018 and an extension of time arrangement to file their income tax return by 31 March 2019, the specified period is the shorter of:

- the period of six months after the end of the accounting year that corresponds to the tax year—1 July 2018 to 31 December 2018
- the period from the end of the accounting year to one month after the tax return is due—1 July 2018 to 30 April 2019.

The specified period ends on 31 December 2018.

##### ***Calculating the specified period without an extension of time arrangement***

In the case of a taxpayer with a balance date of 30 June 2018 without an extension of time arrangement, the specified period is the shorter of:

- the period of six months after the end of the accounting year that corresponds to the tax year—1 July 2018 to 31 December 2018
- the period from the end of the accounting year to one month after the tax return is due—1 July 2018 to 7 November 2018.

The specified period ends on 7 November 2018.

## Main income equalisation scheme

### Section EH 4 – Deposit

37. The minimum deposit is \$200. Deposit amounts cannot exceed a taxpayer's net income derived from carrying out their farming or agricultural, fishing or forestry activity in the accounting year the deposit is accepted. Any interest received from lending or investment activities will not form part of the deposit.
38. Where the net profit has been paid as a salary to trust beneficiaries or company shareholders, the Commissioner is not likely to reassess the taxpayer's income tax return and amend the salary paid to an income equalisation deposit. She will apply her discretion in the manner set out in *SPS 18/01: Retrospective adjustments to salaries paid to shareholder-employees* and *SPS 16/01: Requests to amend assessments*.
39. An eligible taxpayer may make a deposit into the main income equalisation scheme for an accounting year at any time during the accounting year or within the specified period for the accounting year.
40. The Commissioner has neither the ability nor the discretion under the Act to accept an early deposit into the main income equalisation scheme.
41. Section EH 4(4)(c) gives the Commissioner the discretion to accept a late deposit, ie, a deposit made within a time after the end of the specified period for an accounting year in a case or class of cases allowed by the Commissioner. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
42. If the deposit is made within or after the specified period for an accounting year the taxpayer must, at the time of making the deposit, notify the Commissioner that the deposit is for that accounting year.
43. Where the Commissioner does not accept a late deposit, it may, subject to consultation with the taxpayer, be applied to the accounting year in which the deposit was made.
44. Sections DQ 1 and EH 7 provide that the taxpayer can claim a deduction for the amount of the deposit in the applicable accounting year.
45. No deduction is allowed until the deposit is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allow the deduction.

### Section EH 13 – Refund on request

46. A taxpayer may apply in writing for a refund from the main income equalisation scheme under s EH 13. If the taxpayer wants a refund from the main income equalisation scheme and none of the other relevant refund provisions apply the Commissioner must refund the amount applied for. This is to the extent to which the refund can be made up of one or more deposits that have been in the main income equalisation scheme for at least one year.
47. Section EH 14 provides that a refund under s EH 13 is allocated as income to the accounting year the Commissioner receives the application for the refund, unless either of these two situations apply:

- The application is received within the specified period for an accounting year and the taxpayer chooses that the refund is to be treated as income in the accounting year the specified period relates to. In this case the refund is allocated as income to the accounting year the specified period relates to.
  - A late application is received. That is:
    - the application is received within a longer period after the end of the specified period for an accounting year that is allowed by the Commissioner in a case or class of cases; and
    - the taxpayer chooses that the refund be treated as income in the accounting year the longer period relates to. In this case the refund is allocated as income to the accounting year nominated by the taxpayer. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
48. Where the Commissioner does not accept a late application, the refund may, subject to consultation with the taxpayer, be allocated to the accounting year the application was made in.
49. Sections CB 27 and EH 14 provide that the taxpayer must return the refund as income in the applicable accounting year.
50. The refund may not be allocated as income to an accounting year until the application for a refund is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allocate the refund as income.

#### Section EH 15 – Refund for development or recovery

51. A taxpayer may apply, in writing, for an early refund from the main income equalisation scheme in specific circumstances under s EH 15.
52. The Commissioner must refund an amount that has been in the main income equalisation scheme for more than six months to an eligible taxpayer to enable them to:
- undertake planned development or maintenance work; or
  - buy, immediately after the refund is given, livestock for use in their farming business (other than to replace livestock disposed of or lost as a result of a self-assessed adverse event).
53. The Commissioner must refund an amount regardless of the length of time it has been in the main income equalisation scheme to an eligible taxpayer to enable them to:
- buy, immediately after the refund is given, livestock for use in their farming business to replace livestock replaced or lost as a result of a self-assessed adverse event;
  - avoid suffering serious hardship;
  - do anything else the Commissioner determines, in a case or class of cases, is a purpose for which a refund should be given.

54. The Commissioner has the discretion to allow a refund from the main income equalisation scheme, regardless of the length of time the deposits have been in the account, for the taxpayer to do anything the Commissioner determines in a case or class of cases is a purpose for which a refund should be given. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
55. If refund requests are made on the grounds that they will be used to avoid serious hardship, the taxpayer will need to be able to explain to the Commissioner how the refund will be applied to avoid serious hardship.
56. A forecast reduction in income as part of the normal fluctuations in prices which primary producers would expect to experience from time-to-time would not be enough, on its own, to meet the criteria. Although some degree of "hardship" may be on the horizon, the taxpayer will need to be able to show how that event will, or is likely to, lead to them experiencing "serious hardship".
57. It may be hard to show where money is deposited into the scheme and then asked to be withdrawn at the same time or shortly after. In that situation, the financial impact of an early withdrawal will only be the tax deferral and cash-flow benefits.
58. Section EH 16 of the Act provides that a refund under s EH 15 is allocated to the accounting year the Commissioner receives the application for the refund in, unless either of these two situations apply:
  - The application is received within the specified period for an accounting year and the taxpayer chooses that the refund is to be treated as income in the accounting year the specified period relates to. In this case the refund is allocated as income to the accounting year the specified period relates to.
  - A late application is received. That is:
    - the application is received within a longer period after the end of the specified period for an accounting year that is allowed by the Commissioner in a case or class of cases, and
    - the taxpayer chooses that the refund be treated as income in the accounting year the longer period relates to. In this case the refund is allocated as income to the accounting year nominated by the taxpayer. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
59. Where the Commissioner does not accept the late application, the refund may, subject to consultation with the taxpayer, be allocated to the accounting year the application was made in.
60. Sections CB 27 and EH 16 provide that the taxpayer must return the refund as income in the applicable accounting year.
61. The refund may not be allocated as income to an accounting year until the application for a refund is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allocate the refund as income.

## Thinning operations income equalisation scheme

### Section EH 64 – Deposit

62. The minimum deposit is \$200. Deposit amounts cannot exceed a taxpayer's net income derived from carrying out thinning operations in the accounting year the deposit is accepted. Any interest received from lending or investment activities will not form part of the deposit.
63. Where the net profit has been paid as a salary to company shareholders, the Commissioner is not likely to reassess the company's income tax return and amend the salary paid to an income equalisation deposit. She will apply her discretion in the manner set out in *SPS 18/01: Retrospective adjustments to salaries paid to shareholder-employees* and *SPS 16/01: Requests to amend assessments*.
64. An eligible taxpayer may make a deposit into the thinning operations income equalisation scheme for an accounting year at any time during the accounting year or within the specified period for the accounting year.
65. Section EH 64(4)(c) allows the Commissioner to accept a late deposit, ie, a deposit made within a time after the end of the specified period for an accounting year in a case or class of cases allowed by the Commissioner. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
66. If the taxpayer makes the deposit within or after the specified period the taxpayer must, at the time of making the deposit, notify the Commissioner that the deposit is for that accounting year.
67. Where the Commissioner does not accept a late deposit, it may, subject to consultation with the taxpayer, be applied to the accounting year the deposit was made in.
68. Sections DQ 3 and EH 67 provide that the taxpayer can claim a deduction for the amount of the deposit in the accounting year.
69. No deduction is allowed until the deposit is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allow the deduction.

### Section EH 71 – Refund on request

70. A taxpayer may apply, in writing, for a refund from the thinning operations income equalisation scheme under s EH 71. If the taxpayer wants a refund of some or all of the amount in the scheme, and none of the other relevant refund provisions in the Act apply, the Commissioner must refund the amount applied for. This is to the extent the refund can be made up of one or more deposits that have been in the scheme for at least one year.
71. Section EH 72 provides that a refund under s EH 71 is allocated to the accounting year the Commissioner receives the application for the refund in, unless either of these two situations apply:
  - The application is received within the specified period for an accounting year and the taxpayer chooses that the refund is to be treated as income in the accounting year the specified period relates to. In this case the refund is allocated as income to the accounting year the specified period relates to.

- A late application is received. That is:
    - the application is received within a longer period after the end of the specified period for an accounting year that is allowed by the Commissioner in a case or class of cases, and
    - the taxpayer chooses that the refund be treated as income in the accounting year to which the longer period relates, in which case the refund is allocated as income to the accounting year nominated by the taxpayer (refer to [91] to [102] for discussion on how the Commissioner will apply this discretion).
72. Where the Commissioner does not accept a late application, the refund may, subject to consultation with the taxpayer, be allocated to the accounting year in which the application was made.
73. Sections CB 27 and EH 72 provide that the taxpayer must return the refund as income in the applicable accounting year.
74. The refund may not be allocated as income to an accounting year until the application for a refund is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allocate the refund as income.

#### Section EH 73 – Refund for development or recovery

75. A taxpayer may apply, in writing, for an early refund from the thinning operations income equalisation scheme in specific circumstances under s EH 73:
- The Commissioner must refund an amount that has been in the scheme for more than six months to an eligible taxpayer to enable them to undertake planned development or maintenance work for their forestry business.
  - The Commissioner must refund an amount regardless of the length of time it has been in the scheme to an eligible taxpayer to enable them to:
    - avoid suffering serious hardship; or
    - do anything else the Commissioner determines, in a case or class of cases, is a purpose a refund should be given for.
76. If requests for refunds made on the grounds that they will be used to avoid serious hardship, the taxpayer will need to be able to explain to the Commissioner how the refund will be applied to avoid serious hardship.
77. That may be hard to show where money is deposited and a refund request is made at the same time or shortly after. In that situation the financial impact will only be the tax deferral and cash-flow benefits.
78. The Commissioner has the discretion to allow a refund from the thinning operations income equalisation scheme, regardless of the length of time the deposits have been in the account, for the taxpayer to do anything the Commissioner determines in a case or class of cases is a purpose for which a refund should be given. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.

79. Section EH 74 provides that a refund under s EH 73 is allocated to the accounting year in which the Commissioner receives the application for the refund, unless either of these two situations apply:
- The application is received within the specified period for an accounting year and the taxpayer chooses that the refund is to be treated as income in the accounting year the specified period relates to. In this case the refund is allocated as income to the accounting year the specified period relates to.
  - A late application is received. That is:
    - the application is received within a longer period after the end of the specified period for an accounting year that is allowed by the Commissioner in a case or class of cases, and
    - the taxpayer chooses that the refund be treated as income in the accounting year the longer period relates to. In this case the refund is allocated as income to the accounting year nominated by the taxpayer. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
80. Where the Commissioner does not accept a late application, the refund may, subject to consultation with the taxpayer, be applied to the accounting year in which the application was made.
81. Sections CB 27 and EH 74 provide that the taxpayer must return the refund as income in the applicable accounting year.
82. The refund may not be allocated as income to an accounting year until the application for a refund is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allocate the refund as income.

#### Commissioner's discretion – "a case or class of cases"

83. As stated above, the Commissioner has the discretion to accept a deposit into or an application for a refund from the applicable income equalisation scheme after the specified period for an accounting year.

#### Relevant case law

84. The Courts have established some principles around the exercise of a statutory discretion that require the Commissioner to act reasonably in applying her discretion and consider the merits of the taxpayer's particular circumstances and explanation.
85. The Commissioner must exercise her discretion reasonably, as stated by Lord Wrenbury in *Roberts v Hopwood* [1925] AC 578, as follows:

*A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably.*

86. When exercising her discretion, the Commissioner must consider each case on its own merits. This is supported by the Court of Appeal's decision in *Lawton v*

*Commissioner of Inland Revenue* [2003] 2 NZLR 48 in which the Court held that the Commissioner had not properly exercised his discretion in respect of s 30(2) of the Income Tax Act 1976, which provided that the Commissioner may accept a late objection, on the basis that there had been a failure to consider and properly weigh the merits of the taxpayer's late objection.

87. Justice Glazebrook, delivering the unanimous judgment of the Court, quoted the Court of Appeal's previous decision in *CIR v Wilson* (1976) 17 NZTC 12,512:

*... the merits of a proposed objection must be considered unless the explanation for the lateness of the objection is so inadequate that this is unnecessary.*

88. The Court also found that the taxpayer had given a full and credible explanation for the lateness of the objection. Justice Glazebrook stated:

*... In such a case, unless this explanation was palpably untrue or quite unjustified, it would be rare for the explanation to be deemed so inadequate that the merits need not be examined.*

89. Another principle established by the Court is that the Commissioner may make policies, but the policies cannot be overly rigid. This is highlighted in *Gisborne Mills Ltd v CIR* (1989) 11 NZTC 6,194. Justice Robertson found that the Commissioner is required to weigh the particular circumstances which exist in each individual case, rather than adhere to policy:

*The test is whether, by the rigid and inflexible application of policy, there has been a reasoned exercise of the discretion ...*

*In my view, however the discretion required him to weigh the particular circumstances which existed ... In as much as none of these exceptional matters appear to have been addressed because of the preoccupation with the policy issue, I am forced to the conclusion that there has been a failure by the Commissioner to exercise the discretion which Parliament has given him. ...*

*I find therefore, that the respondent has abused his powers by refusing to consider the specific circumstances of this case.*

#### What is reasonable?

90. What needs to be considered is how the Commissioner should exercise her discretion, with reference to the principles established by the Courts.

#### Late deposits and applications for a refund

91. In most instances, the taxpayer's financial position for an accounting year will not be known until the taxpayer's set of accounts and tax return have been completed. At this point, the decision on whether to make a deposit to the applicable income equalisation scheme, and of how much, may be made.
92. So an eligible taxpayer could reasonably be expected to make a deposit into or request a refund from the applicable income equalisation scheme for a particular accounting year at the time of filing their tax return, provided the tax return is filed by the due date.
93. However, it may not be possible or practicable for the deposit or application to be sent to the Commissioner with the tax return. It may also take a tax agent a period of time to arrange for the deposit or application for a refund to be sent to Inland Revenue. So eligible taxpayers should be allowed a reasonable period of time after either:

- the taxpayer's income tax return due date, or
  - the date the taxpayer's income tax return was filed on to forward the deposit or application to Inland Revenue.
94. The Commissioner considers it is reasonable to apply her discretion and accept late deposits and late applications for a refund in relation to the applicable income equalisation scheme by the earlier of:
- one month from the date of filing the tax return for that accounting year; and
  - one month from the date the tax return for that accounting year is due to be filed.
95. If the specified period for an accounting year is longer than the extended timeframe set out in [94] the taxpayer may still make the deposit or application for a refund within the specified period. The Commissioner is not likely to further extend this to provide a late deposit or late application for a refund unless exceptional circumstances apply. Refer [91] to [102] for discussion of exceptional circumstances.
96. Taxpayers without a tax agent who require an extension of time to file their income tax return should refer to *SPS 09/03: Extension of time applications from taxpayers without tax agents*.

## Examples

### ***Making a late deposit with an extension of time arrangement***

A taxpayer has a tax agent. The taxpayer has a balance date of 31 March. The taxpayer's income tax return due date for the 2018 accounting year is 31 March 2019, incorporating an extension of time arrangement. The taxpayer's income tax return was filed on 31 October 2018.

The specified period for making deposits into the applicable income equalisation scheme ends on 30 September 2018, which is the shorter of:

- the period of six months after the end of the accounting year that corresponds to the tax year—1 April 2018 to 30 September 2018
- the period from the end of the accounting year to one month after the tax return is due—1 April 2018 to 30 April 2019.

For a deposit to be accepted for the 2018 accounting year, the taxpayer must make the deposit within the discretionary extended timeframe, ie, by 30 November 2018, which is the earlier of:

- one month from the date of filing the tax return for that accounting year—30 November 2018
- one month from the date that the tax return for that accounting year is due to be filed—30 April 2019.

In the same scenario, if the taxpayer's income tax return was filed on 1 May 2019, a deposit would need to be paid by 30 April 2019, which is the earlier of:

- one month from the date of filing the tax return for that accounting year—1 June 2019
- one month from the date that the tax return for that accounting year is due to be filed—30 April 2019.

In the above scenarios, if there are valid reasons why the taxpayer cannot make the deposit within the specified period or discretionary extended timeframe for an accounting year, the Commissioner will consider the merits of the taxpayer's situation on a case-by-case basis and may still accept the late deposit.

### ***Making a late deposit without an extension of time arrangement***

A taxpayer with a 30 June 2018 balance date, with no extension of time arrangement, must file their income tax return by 7 October 2018. The taxpayer filed their income tax return on 30 September 2018.

The specified period for making deposits into the applicable income equalisation scheme ends on 7 November 2018, which is the shorter of:

- the period of six months after the end of the accounting year that corresponds to the tax year – 1 July 2018 to 31 December 2018, and
- the period from the end of the accounting year to one month after the tax return is due—1 July 2018 to 7 November 2018.

The taxpayer should make the deposit by the end of the specified period, ie, 7 November 2018. This is a later date than would be allowed by applying the discretionary extended timeframe, ie 31 October 2018, which is the earlier of:

- one month from the date of filing the tax return for that accounting year—30 October 2018
- one month from the date that the tax return for that accounting year is due to be filed—7 November 2018.

However, if there are valid reasons why the taxpayer cannot make the deposit by 7 November 2018, the Commissioner will consider the merits of the taxpayer's situation on a case-by-case basis and may still accept the late deposit.

### **Early applications for a refund**

97. The Commissioner will allow applications for an early refund for unforeseen development, ie, development work not anticipated when the deposit was made, which arose through an adverse event (for example, a flood, drought, fire, livestock disease). Unforeseen development is not confined to deductible development expenditure and may also include any capital expenditure that will result in increased production.

### **Adverse events**

98. If an event is classified as an adverse event, the Commissioner may extend the timeframe for eligible taxpayers to make a deposit or request an early refund from

the main income equalisation scheme under ss EH 4 and EH 15(3)(c). Note that a taxpayer must still explain how the adverse event has affected them before these provisions can apply.

99. Where the Commissioner extends her discretion due to an adverse event being declared, this is published on Inland Revenue's website:  
<http://www.ird.govt.nz/business-income-tax/income-equalisation/special-provisions/>

#### Exceptional circumstances

100. Where an eligible taxpayer makes a late deposit, or an application for an early refund or a late application for a refund outside of the circumstances detailed above, it may still be accepted by the Commissioner. Each request will be considered on a case-by-case basis, taking into account the merits of the taxpayer's particular situation.
101. Reasons to accept a late deposit, an application for an early refund, or a late application for a refund could include, but are not limited to:
- a taxpayer receiving incorrect advice from their tax agent, or
  - a taxpayer experiencing a sudden or unexpected change in circumstances.
102. However, these examples are not indicative of situations when a late deposit, an application for an early refund, or a late application for a refund will automatically be accepted. All factors must be considered before the Commissioner accepts the deposit as being made in the requested tax year.

This Standard Practice Statement is signed on 16 May 2019

**Rob Wells**  
**Manager, Technical Standards OCTC**