



# SPS 16/01

## Standard Practice Statement

### Requests to amend assessments

#### Introduction

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

This Standard Practice Statement ("SPS") sets out Inland Revenue's practice for exercising the Commissioner of Inland Revenue's ("the Commissioner") discretion under s 113 of the Tax Administration Act 1994 to amend assessments to ensure their correctness. It is intended both to provide direction to those Inland Revenue staff delegated to use the discretion in s 113 and to give guidance to taxpayers and their advisors in formulating requests for amendments.

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

#### Application

This SPS applies from 1 April 2016. It replaces all previous policies and standard practices regarding the exercise of the discretion under s 113, including SPS 07/03 *Requests to Amend Assessments* (Tax Information Bulletin Vol 19, No 5 (June 2007): 8) but excluding QB 09/04 *The relationship between section 113 of the TAA and the proviso to section 20(3) of the GST Act when a registered person has not claimed an input tax deduction in an earlier taxable period* (Tax Information Bulletin Vol 21, No 6 (August 2009): 53).

#### Summary

##### *Section 113 and the Commissioner's discretion*

1. The Commissioner acknowledges that in a self-assessment regime taxpayers will occasionally take an incorrect tax position and that correcting these positions is an integral part of tax administration. Section 113 contains a broad discretion allowing the Commissioner to amend assessments to ensure their correctness.
2. The Commissioner's policy is generally to use the discretion to correct a tax position, subject to the criteria described in this Statement.
3. The criteria applied when determining whether to exercise the s 113 discretion are based on the care and management principles contained in ss 6 and 6A of the TAA.

### *Care and management of the taxes*

4. Section 6(1) of the TAA requires that the Commissioner's best endeavours are used to protect the *integrity of the tax system*, including taxpayers' perceptions of that integrity. In carrying out this function, the Commissioner is bound not only to protect the rights of taxpayers to have their liability determined fairly, impartially and according to law, but also to have regard to the responsibilities of taxpayers to comply with the law. Section 15B of the TAA sets out taxpayers' responsibilities.
5. To discharge her s 6A(3) duties, the Commissioner must compare the available courses of action as to their likely effect on the amount of net revenue she collects over time. To do this, the Commissioner must consider the short- and long-term implications of each course of action and have regard to all three factors listed in s 6A(3): available resources, the promotion of compliance (especially voluntary compliance) by all taxpayers and the compliance costs incurred by taxpayers.
6. Inland Revenue has limited resources to undertake what sometimes can be a lengthy verification process to determine whether an assessment should be amended. Accordingly, it is consistent with the obligation of taxpayers under s 15B, and with ss 6(1) and 6A(3), for the Commissioner to limit the amount of time and other resources that will be spent investigating amendment requests. Not all requested amendments, therefore, will necessarily be made.

### *The process used to consider s 113 requests*

7. In considering s 113 requests, the Commissioner must be assured that the amendment the taxpayer seeks will ensure the assessment is correct when amended, even if it was also correct beforehand. Where the Commissioner is not initially convinced that the amendment requested will result in a correct assessment, a decision must be made to commit Inland Revenue's limited resources to considering the request further.
8. Once the Commissioner, having decided to commit appropriate resources to the issue, is satisfied that making the requested amendment will result in a correct assessment being issued, the assessment will be amended. This is unless there is a residual reason, other than her limited resources, why she should not do so.
9. In undertaking this approach, the Commissioner breaks the inquiry down into four possible phases (see further at [34]):
  - Initial examination of the request to see if the matter can be disposed of simply.
  - If it cannot, consider whether the Commissioner should apply additional resources to consider the request further.
  - Determine whether a correct assessment will result from the requested amendment.
  - Finally, determine whether there is any residual reason (other than her limited resources) why the Commissioner should not make the requested amendment.

### *Considering simple amendment requests and voluntary disclosures*

10. The Commissioner will follow the process set out in this SPS in determining whether the amendment requested will lead to the making of a correct assessment.
11. There may be very obvious errors that require little consideration. For instance, if a request is made to correct an arithmetic, transposition or keying error made by either the taxpayer or Commissioner, the correction will be made without further consideration.

*Factors the Commissioner may consider in more complex cases*

12. When exercising the s 113 discretion in more complex cases, the Commissioner will evaluate any amendment request using the care and management principles. To best inform this care and management decision, the Commissioner will objectively consider the relevant factors discussed in this SPS (as required on a case-by-case basis).

*How does a taxpayer make a request to amend their assessment?*

13. Requests to correct obvious errors, such as arithmetic, transposition and keying errors, may be made to Inland Revenue by telephone or in writing.
14. Requests to amend returns where the tax effect of the amendment requested is \$10,000 or less may generally be made by telephone or in writing.
15. Requests to amend returns where the tax effect of the amendment requested is greater than \$10,000 must be made in writing.
16. Taxpayers or their agents making amendment requests must supply the Commissioner with all relevant information to substantiate the merits of the amendment requested.

*How does s 113 relate to s 113A and the proviso to s 20(3) of the Goods and Services Tax Act 1985?*

17. Where the taxpayer is able to make the required correction for themselves in a later period, the Commissioner's practice is generally not to expend limited resources considering whether to exercise the discretion under s 113 in these circumstances. This is because both s 113A and the proviso to s 20(3) of the Goods and Services Tax Act 1985 ("the GST Act") provide a specific mechanism by which the taxpayer is able to self-correct the error. As such, the taxpayer does not need to request that the Commissioner amend an assessment under s 113 to make the correction. This outcome is more consistent with the scheme of the legislation, which requires that taxpayers take responsibility for correct assessments wherever possible.

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## Detailed discussion

### Section 113 and the Commissioner's discretion

18. The Commissioner acknowledges that both taxpayers and the Commissioner will occasionally make errors and that correcting these is an integral part of tax administration.
19. Section 113 contains a broad discretion allowing the Commissioner to amend assessments to ensure their correctness. This SPS outlines the general principles that will be followed.
20. The Commissioner will generally agree to amend assessments that are requested where the result can be clearly shown to be correct. This is subject to the criteria described below. It must also be borne in mind that, as a matter of law, the Commissioner cannot be compelled either to investigate amendment requests or subsequently to amend the assessments.<sup>1</sup>
21. In determining whether to exercise the s 113 discretion, the Commissioner will evaluate an amendment request using the care and management principles in ss 6 and 6A of the TAA, while balancing the obligations of taxpayers to make correct self-assessments.

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<sup>1</sup> *CIR v Wilson* (1996) 17 NZTC 12,512 (CA); *Lawton v CIR* (2003) 21 NZTC 18,042 (CA).

22. The care and management principles are discussed below and more detailed guidance can be found in Interpretation Statement IS 10/07 *Care and Management of the taxes covered by the Inland Revenue Acts – Section 6A(2) and (3) of the Tax Administration Act 1994*.<sup>2</sup>

## **Care and management of the taxes**

### *Section 6: Integrity of the tax system*

23. Section 6(1) of the TAA requires the Commissioner to use her best endeavours to protect the *integrity of the tax system*, including taxpayers' perceptions of that integrity. In carrying out this function, the Commissioner is bound not only to protect the rights of taxpayers to have their liability determined fairly, impartially and according to law, but also to have regard to the responsibilities of taxpayers to comply with the law. Section 15B of the TAA sets out taxpayers' responsibilities and, in particular, the obligations to:
- (aa) if required under a tax law, make an assessment:
  - (a) unless the taxpayer is a non-filing taxpayer, correctly determine the amount of tax payable by the taxpayer under the tax laws:
  - (b) deduct or withhold the correct amounts of tax from payments or receipts of the taxpayer when required to do so by the tax laws:
24. Given this, the Commissioner may consider a taxpayer's compliance history when deciding whether to apply s 113 to an amendment request. Although not decisive, a particularly poor compliance history may support the Commissioner declining to make the requested amendment where, in her opinion, making such an amendment would not promote other taxpayers' perceptions of the integrity of the tax system or voluntary compliance (see further at [55] and [56] below).

### *Section 6A*

25. Section 6A (together with s 6) was enacted to provide the framework within which the Commissioner administers the tax system. Section 6A(3) clarifies the Commissioner's overall objective in carrying out those functions.
26. To discharge her s 6A(3) duties, the Commissioner must compare the available courses of action as to their likely effect on the amount of net revenue collected over time. To do this, the Commissioner must consider the short- and long-term implications of each course of action and have regard to all three factors listed in s 6A(3). These factors are:
- the resources available to the Commissioner (s 6A(3)(a));
  - the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts (s 6A(3)(b)); and
  - the compliance costs incurred by taxpayers (s 6A(3)(c)).
27. The practical effect of the words is that the Commissioner can adopt courses of action that forgo the collection of the highest net revenue:
- in the short term, if it is considered that this will enable the collection of more net revenue in the longer term; and
  - from particular taxpayers, if it is considered that this will enable more net revenue to be collected from all taxpayers.

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<sup>2</sup> More information on this statement can be found at [www.ird.govt.nz](http://www.ird.govt.nz) (search keyword: "IS 10/07").

28. The words *notwithstanding anything in the Inland Revenue Acts* in s 6A(3) mean that the Commissioner can carry out the course of action she considers will collect over time the highest net revenue that is practicable within the law, even if it results in less tax being collected than is imposed, or required to be collected, by another provision. However, the words *within the law* in s 6A(3) also mean that the Commissioner must act consistently with the rest of the Inland Revenue Acts.

#### *Resources available to the Commissioner*

29. Inland Revenue has limited resources to undertake what sometimes could be lengthy verification processes to determine whether the proposed amendment would result in a correct assessment. When meeting the obligation to collect over time the highest net revenue that is practicable within the law under s 6A(3), the Commissioner must consider the resources available, promoting compliance (especially voluntary compliance) by all taxpayers, and taxpayers' compliance costs.
30. Accordingly, it is consistent with the obligation under s 6A(3) for the Commissioner to limit the amount of time and other resources that will be spent investigating amendment requests. Not all requested amendments will necessarily be made. Ensuring a balance between time spent considering an amendment request and other activities is also consistent with the obligation to protect the integrity of the tax system under s 6(1).
31. The Commissioner will be reluctant to agree to investigate the correctness of an amendment request that would require the application of disproportionate amounts of Inland Revenue resources (that is, excessive resources when compared to the amount of tax at stake). This is not to say that the Commissioner will only use minimal resources to determine the correctness of amendment requests or never agree to complex amendment requests. The extent and relevance of a taxpayer's disclosure and the amount of tax at stake for the amendment request will indicate the amount of the Commissioner's resources needed to consider whether making the requested amendment will lead to a correct assessment being issued.

#### **The process used to consider s 113 requests**

32. As stated in *Westpac Securities NZ Ltd v Commissioner of Inland Revenue*<sup>3</sup> ("*Westpac*") at [65], "...the focus of the inquiry as to whether the power was available would be centred on whether the amendment the taxpayer seeks to have made will ensure the assessment is correct when amended, even if it was also correct beforehand".
33. Once a taxpayer is able to show that making the requested amendment will result in a correct assessment being issued, the next step involves "the Commissioner's decision whether or not to exercise her discretion in a particular case".<sup>4</sup>
34. In undertaking this approach, the Commissioner breaks the exercise into phases:
- Phase one: An initial examination of the request. If it is clear and obvious that an error has occurred and that the error can be easily corrected, then the amendment will be made, subject to the application of phase four. The request will not have to progress through phases two and three. Conversely, if it is clear and obvious that agreeing to the request will not result in a correct assessment, the request will be declined at this phase.

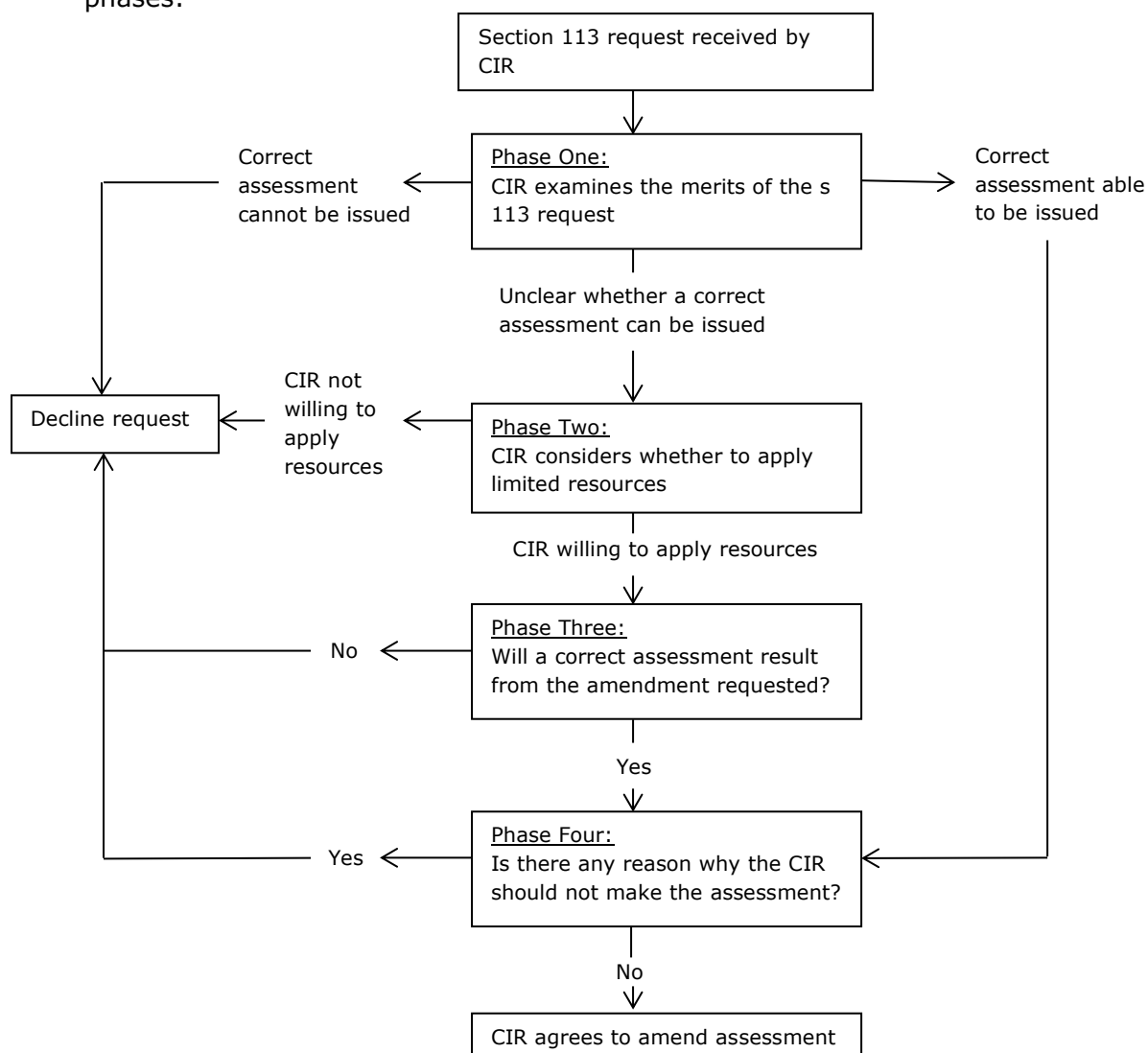
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<sup>3</sup> [2014] NZHC 3377, (2014) 26 NZTC ¶11-118.

<sup>4</sup> *Westpac* at [66].

- Phase two: If it is unclear whether agreeing to the request will result in a correct assessment being issued, the Commissioner will need to consider whether additional limited resources should be applied to consider the request further.
- Phase three: In cases where it is decided to apply further resources, the Commissioner will consider whether a correct assessment will result from the requested amendment.
- Phase four: Determine whether there is any residual reason (other than her limited resources) why the Commissioner should not make the requested amendment.

The following flowchart illustrates the progress of a s 113 request through the four phases:



Each of these phases is summarised below:

### **Phase One: Initial examination of request**

35. The Commissioner receives many thousands of requests each year, pointing out errors that have been made by both taxpayers and the Commissioner, and requesting that the appropriate assessment be amended. **At this phase, the Commissioner considers the apparent merits of all s 113 requests. This consideration is based on the facts that are presented by the taxpayer in their request (and**

**those that may already be known to the Commissioner).** In the vast majority of these cases the facts are clear and it is obvious that making the requested amendment will correct an error that has been made. Conversely, it may be equally clear that making the requested amendment will not result in a correct assessment being able to be made. **The aim of this phase is to act as a “filter” for these clearly correct/incorrect requests and, once the Commissioner has considered the merits of the request, to either decline the request or progress the request directly to phase four, and to do so with the minimum use of the Commissioner’s resources.** There can be a number of factors that determine whether a request is able to be progressed to phase four (or declined) at this point, for instance:

- If the amendment is being requested to correct an arithmetic, transposition or keying error made by either the taxpayer or Commissioner, the correction will be made without further consideration. See [36] below.
- Has the taxpayer provided all the required information and has the request been made in the appropriate format? If not, the matter will not proceed unless the necessary information is provided. Note that this factor might also emerge at a later stage, when the Commissioner has begun to examine the question more closely, in which case the matter might not proceed further unless the necessary information can be easily provided by the taxpayer. See further at [37] and [64] to [67].
- Is the taxpayer under investigation by Inland Revenue or involved in a dispute with the Commissioner? If so, the request is unlikely to proceed, subject to the outcome of any dispute. See further at [44] and [75] to [78].
- Is the amendment able to be made by the taxpayer in a later period? See further at [86] to [93].
- Is the period that the taxpayer wishes to have amended subject to a statutory time bar? For example, where the Commissioner is unable to refund an amount of tax because the period subject to the amendment request is time barred, resources will not be applied to considering the request for that statute-barred period further. See further at [79] to [84].

*Arithmetic, transposition and keying errors*

36. As already stated above, if a request is made to correct an arithmetic, transposition or keying error made by either the taxpayer or Commissioner, the correction will be made without further consideration. The Commissioner has already made a decision, based on the care and management principles discussed above, to allocate resources to ensure previously incorrect assessments are corrected. This is on the basis that the amendment required is straightforward and the amount of resources required is minor.

**Phase Two: Whether the Commissioner will apply resources to consider the request further**

37. **Given what has already been stated at phase one (at [35] above), the majority of s 113 requests will not need to be considered at this phase. Those cases that do need to be considered will be cases where, following the phase one consideration of the merits of the request, it remains uncertain whether acceding to the request will result in a correct assessment. These cases will be more complex. At this second phase, the Commissioner must decide whether to devote her limited resources to resolving requests when their correctness remains uncertain after the initial examination.** In some cases, a balancing of the factors set out below will mean that the Commissioner can simply decide under s 113 to take the matter no further. This is because the courts have recognised that the allocation of resources is a matter for the Commissioner and she does not necessarily have to allocate resources to determine whether a proposed



amendment is indeed correct. Resource consideration commences at this phase and continues throughout the s 113 process.

38. The more easily verifiable the correctness of the proposed amendment is, the more likely it will be that the Commissioner will allocate resources to making the requested amendment. Where the proposed adjustment is merely arguable or involves disputed facts or statutory interpretation, it is less likely that the Commissioner will devote resources to processing the request further (see further at [41] to [44]).

Factors the Commissioner may consider at Phase Two when determining whether to devote resources to considering the remaining requests

39. The cases that remain after phase one are those where it is not immediately certain that making the requested amendment will result in a correct assessment. Therefore, the Commissioner needs to determine if continuing to consider the request justifies the commitment of additional resources.
40. When determining whether to apply the s 113 discretion to these more complex cases, the Commissioner will evaluate any amendment request using the care and management principles discussed at [23] to [31] above. These care and management factors, as relevant on a case-by-case basis, will each be weighed up in reaching a decision. **This is a balancing exercise where it will be rare for one factor to be determinative.** Even if it is decided to proceed, it may later be necessary to re-evaluate the position if, for example, further information is needed and the issue becomes particularly difficult to resolve. The Commissioner may later determine that no further resources will be applied to the request.

*Primacy of disputes resolution process*

41. Requesting an amendment under s 113 cannot be used as an alternative means of considering the merits of the assessment by circumventing the statutory disputes procedure.<sup>5</sup> Further, the Commissioner does not consider it appropriate to use s 113 to amend assessments when the facts of a case or the interpretation of the law to those facts is at issue. Disputed facts and statutory interpretation, or instances where the facts or law is unclear, should properly be considered using the disputes resolution process.
42. If a taxpayer is aware that they had the disputes resolution procedure available to them and did not engage with that process within the available time period, but then attempts to use s 113 to challenge an assessment outside the disputes resolution timeframe, the Commissioner will take this into account in deciding whether to decline the amendment request.<sup>6</sup>
43. To accede to a taxpayer's amendment request in these circumstances would potentially mean treating that taxpayer more advantageously than others who, in line with the statutory scheme of the TAA, use the disputes resolution regime to seek amendment to assessments. Section 6(2)(c) of the TAA requires that the Commissioner protect the rights of taxpayers to have their tax affairs *treated with no greater or lesser favour than the tax affairs of other taxpayers*. As Wylie J observed in *Arai Korp* (at [68]), a taxpayer who has sat on their hands and done nothing is not entitled to expect preferential treatment.

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<sup>5</sup> *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, (2011) 25 NZTC ¶20-103.

<sup>6</sup> *Arai Korp Limited v Commissioner of Inland Revenue* [2013] NZHC 958, (2013) 26 NZTC ¶21,014.

44. As stated previously, the Commissioner will not amend assessments while any item of those assessments remains the subject of a current dispute under Part 4A. The Commissioner will make any required amendment at the conclusion of the disputes process. In practice this means that resources will not be applied to the case.

*Whether the subject matter of the request could apply to other taxpayers*

45. The focus of this factor is on whether the request could also have application for other taxpayers and, if so, the extent to which this would impact on the Commissioner's resources. Commonly, in such cases, it will make sense for the matter to be considered further for the Commissioner to clarify the position for all taxpayers potentially affected. The more important the precedent value, the more likely it is that resources will be applied.

*How similar requests have been treated by the Commissioner*

46. Similarly, if the Commissioner has allowed other requests with the same facts and legal analysis, then this would be a factor that would generally support exercising the discretion. However, if an assessment was previously amended under s 113 on what the Commissioner now considers to be an incorrect basis, then that would not provide authority for treating similar requests in the same manner.

*Whether the request is a voluntary disclosure*

47. The Commissioner will, as a matter of practice, always apply resources to considering a s 113 request that amounts to a voluntary disclosure (in that the request discloses a tax shortfall). This is on the basis that resources will be applied to considering whether the disclosure is full and complete and whether a shortfall penalty should be imposed in accordance with the process set out in SPS 09/02 *Voluntary disclosures*. Therefore, she is not applying any additional resources in considering the s 113 request. See further at [71] to [73].

*Whether the taxpayer took their original position relying on advice from the Commissioner*

48. As a matter of practice, the Commissioner will generally follow public statements. However, the Commissioner is not strictly bound by such statements or other advice unless they are binding rulings that apply to the particular taxpayer and arrangement.<sup>7</sup>
49. From time to time, the Commissioner will take the view that advice that has previously been given is incorrect. This may occur, for example, where the court clarifies the law or the Commissioner takes a different view of the law.
50. Where the Commissioner has given incorrect advice (other than a binding ruling), this does not operate to change the tax legally payable on the basis of the correct application of the law (because the Commissioner cannot simply choose to alter the statutory basis of an assessment<sup>8</sup>). However, it may mean that an assessment previously made on the basis of that advice is now incorrect. Accordingly, that assessment may be corrected by the Commissioner following the application of the principles set out in this SPS, for example, provided it is possible to correctly establish the correct position without undue application of the Commissioner's resources.

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<sup>7</sup> *CIR v Ti Toki Cabarets (1989) Ltd* (2000) 19 NZTC 15,874 (CA); *Lemington Holdings Ltd (No 2) v CIR* (1983) 6 NZTC 61,576 (HC); *Westpac Banking Corporation v CIR* (2008) 23 NZTC 21,694 (HC).

<sup>8</sup> *Vestey v IRC* (1979) 3 All ER 976 (HL); *R v IRC, ex p Wilkinson* [2006] 1 All ER 529 (HL)

51. The Commissioner's statement *Status of the Commissioner's advice*<sup>9</sup> more fully sets out the status of advice that is given by the Commissioner. It discusses the circumstances in which a change of view will be applied retrospectively and may therefore result in the approval of requests to amend existing assessments made in reliance on the former view of the Commissioner.

*Whether there has been a delay in making the request*

52. This factor relates to the length of time since the original position was first taken or the taxpayer became aware of the issue, or between the taxpayer becoming aware of the issue and the s 113 request.
53. When a substantial amount of time has passed between the events relevant to the proposed amendment and the request, it may be difficult for the Commissioner to ascertain and/or verify the relevant facts. The longer that time the more this factor supports a decision not to investigate the request further, after making a preliminary review of the adequacy of the material.

*The size of the proposed amendment*

54. If the size of the amendment is large in absolute terms or material for the taxpayer, this might be a factor that supports the Commissioner devoting resources to determine the correctness of the amendment. Conversely, very small amounts might not justify the allocation of resources when the care and management factors are viewed as a whole, unless it is a very straightforward case. This factor should never be decisive however.

*Taxpayer's compliance history*

55. The Commissioner may take a taxpayer's compliance history into consideration when deciding whether to apply resources to an amendment request. Although never decisive, a particularly poor compliance history may support the Commissioner's decision not to devote resources to consider the correctness of the requested amendment.<sup>10</sup> This may occur, for instance, when a taxpayer's compliance history means the Commissioner is unable to accept the evidence for the requested amendment at face value and considers that, as a result, further investigation is required.
56. Agreeing to the requested amendment in this circumstance, without further investigation, could be seen as undermining other taxpayers' perceptions of the integrity of the tax system and voluntary compliance. It is emphasised that declining a s 113 request in this circumstance will be a rare occurrence and will require the approval of a senior officer.

*Any other considerations relevant to the particular case*

57. The above list of factors is intended to be comprehensive, recognising the broad discretionary power contained in s 113, but not to be exhaustive. There may be other considerations arising out of a particular case that are relevant in determining what impact the proposed course of action for that particular case would have on voluntary compliance and on the integrity of the tax system, including taxpayer perception of that integrity.

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<sup>9</sup> More information on this Statement may be found at [www.ird.govt.nz](http://www.ird.govt.nz) (search keyword: "status of Commissioners advice")

<sup>10</sup> *Arai Korp; Charter Holdings Ltd v C of IR* (No 2) [2015] NZHC 2041, (2015) 27 NZTC ¶22-022

**Phase Three: Whether a correct assessment will result from the requested amendment**

58. Where it is decided to apply additional resources to consider the requested amendment (which will most often be the case), the Commissioner will then consider the merits of the request and act accordingly. Sometimes this will require further information to be provided by the taxpayer and additional technical analysis to be undertaken. This step may take some time. The position requested must be consistent with the Commissioner's view of the law, on the facts presented. If, after examining the request, the Commissioner concludes that a correct assessment can be issued, the request will be progressed to phase four. However, if the requested position is contrary to the Commissioner's view of the law, or the Commissioner remains uncertain that a correct assessment can be made, the request will be declined. In addition, if the commitment of resources proves to be much greater than anticipated in the context of the matters raised during this phase, the request will revert to phase two and the issue of the Commissioner's resources will be reconsidered.

**Phase Four: Final Considerations: Whether the discretion will always be exercised**

59. When the Commissioner is satisfied the amendment requested will lead to the making of a correct assessment, that assessment will be made unless a relatively rare circumstance exists that suggests that, on balance, the integrity of the tax system will be undermined.

These circumstances can include, for example:

- (a) Where the request is, or is part of, a tax avoidance arrangement.

This is because, while the requested adjustment may be a correct interpretation of the law when considered in isolation, the Commissioner would not be convinced that the resulting assessment would be correct given the presence of tax avoidance. The Commissioner's view of the law on tax avoidance is set out in Interpretation Statement *IS 13/01 – Tax avoidance and the interpretation of sections BG 1 and GA 1 of the Income Tax Act 2007*.<sup>11</sup>

- (b) Where a taxpayer requests the Commissioner to amend an assessment from one correct tax position to another position that is also correct

When a taxpayer requests the Commissioner to amend an assessment from one correct tax position to another tax position that is also correct, the fact the original position was correct is a factor the Commissioner may take into account in deciding whether to use her discretion to make the amendment requested. As stated by Clifford J in *Westpac* at [67]:

There could be any number of valid reasons why the Commissioner may decline to exercise her discretion in situations of regretted correct tax positions including where the taxpayer appears to be gaming the system. ... The fact that Westpac, a well resourced, sophisticated and well advised taxpayer says that it "erred" when the relevant offset elections were made may be a proposition that the Commissioner will need to consider carefully when deciding whether or not to exercise her discretion.

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<sup>11</sup> More information on this Statement may be found at [www.ird.govt.nz](http://www.ird.govt.nz) (search keyword "interpretation of BG 1").

Two matters flow from these judicial comments. Firstly, whether a taxpayer erred in taking their original tax position is a factor the Commissioner may take into account in deciding whether to make the requested adjustment. A taxpayer could be said to have “erred” where they did not take the tax position they intended, through mistake or oversight, or the tax position they took, though technically possible and therefore already correct, was not one they would have taken if they had been in possession of all the relevant facts at that time.

If the request arises from such an oversight, it is more likely the amendment will be made than if the request is simply the result of the taxpayer changing their mind. This is because the TAA places an obligation on taxpayers to make self-assessments correctly and it is not contemplated that unlimited additional variations can be made at a cost to the Commissioner. Amendments should not be able to be made merely at will. On this basis, a request for multiple changes to tax positions will also be unlikely to be agreed to.

The Commissioner may also take into account the fact a taxpayer is “well resourced, sophisticated and well advised” and therefore generally better equipped to be able to provide evidence that they erred in taking their original position.

60. To allow an amendment in these circumstances may have a negative impact on other taxpayers’ perceptions of the integrity of the tax system, especially as they relate to the concepts of statutory timeframes<sup>12</sup>, certainty and their own future voluntary compliance. In these instances, the decision not to apply the discretion will be made by a senior Inland Revenue officer, with advice from the Legal and Technical Services group.

### **How does a taxpayer make a request to amend their assessment?**

#### *Mode of request*

61. A request to correct obvious errors, such as arithmetic, transposition and keying errors may be made by telephone or in writing.<sup>13</sup>
62. A request to make adjustments other than these obvious errors must be made as follows:
  - Requests to amend returns where the tax effect of the amendment requested is \$10,000 or less may be made by telephone or in writing. However, where the request is made by telephone, Inland Revenue may ask that these requests be put in writing, especially where, for example, there are consequential adjustments that may need to be made to other returns or taxpayers.
  - Requests to amend returns where the tax effect of the amendment requested is greater than \$10,000 must be made in writing.
63. To ensure there is a clear record of the amendment request made by a taxpayer, other than a request to adjust for an obvious error (as provided in [61] above), the ability to accept an amendment request by telephone is limited to calls that are received by Inland Revenue at a site that has call recording. For practical purposes, this means that a taxpayer will need to call using one of Inland Revenue’s 0800 numbers. Where a call is received by a site that does not have call recording, the taxpayer may be asked to put their request in writing. An amendment request for an

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<sup>12</sup> *Wilson; Charter Holdings Ltd*

<sup>13</sup> “in writing” includes by electronic means.

obvious error that is made by telephone should also be made by calling one of Inland Revenue's 0800 numbers. However, these requests will be dealt with irrespective of whether the site receiving the call has call recording.

*Information required with request*

64. The onus is on the taxpayer to provide all relevant information with their amendment request. This information will enable the Commissioner to consider the merits of the amendment request and verify that the amendment will lead to a correct assessment. Providing all relevant information at this early stage will help to have the request dealt with in the truncated phase one/phase four process (see further at [35] above).
65. If insufficient information is provided to enable the Commissioner to confirm that a correct assessment will result from the requested amendment, the request may be declined or the taxpayer will be asked to supply the missing information (if this is known). Where a request is declined because of insufficient information, the taxpayer is able to reapply once the missing information is obtained.
66. As stated previously in this SPS, whether the Commissioner will devote resources to determine the correctness of the amendment requested is something that will continue to be considered throughout this verification process, using care and management principles. The Commissioner must make appropriate resourcing decisions using these principles, regardless of the effort and resources committed by the taxpayer.
67. Taxpayers or their agents making amendment requests under s 113 must supply the Commissioner with all relevant information to substantiate the merits of the amendment requested. This should include the following (as relevant):
  - the tax types and periods containing the tax position that the taxpayer wishes to amend;
  - the decrease in tax liability<sup>14</sup> that will result from any amendment;
  - a description of the original tax position, including the background circumstances and the reasons the original tax position was taken;
  - the nature of the amendment, including any relevant tax laws;
  - how and why the need for the amendment was identified;
  - details of any incorrect advice given directly to the taxpayer by Inland Revenue and how the taxpayer relied on that advice;
  - the action required to ensure correctness;
  - all relevant documents and records or other information supporting the amendment request;
  - whether the taxpayer is aware of any relevant view published by the Commissioner and the extent to which the taxpayer's amended tax position is consistent with that published view.

**Amending assessments**

*Advice to taxpayers*

68. Where the decision is to decline to amend the assessment, the Commissioner will advise the taxpayer or their agent of the decision and the reasons the request was declined. Where the request has been made by telephone, the decision to decline and the reasons for declining the request may be given during the telephone call. If a

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<sup>14</sup> An amendment request that results in an increase in the tax payable is a voluntary disclosure and will be dealt with by following the process set out in SPS 09/02 *Voluntary disclosures*. See [71] – [73] below.

final decision cannot be given at the time the telephone call is received, the final decision (to decline the request, together with the reasons for declining) may be given either by a telephone call to the taxpayer (or their agent) or in writing.

#### *Consequential adjustments*

69. When amending an assessment, the Commissioner will ensure that all consequential adjustments to other tax types and/or periods (including other taxpayers' assessments) are made once they are confirmed by the affected taxpayers. That may mean that in some cases the Commissioner will require further information before making such consequential amendments.

#### *Fresh or increased liability*

70. Under s 113(2), if any amended assessment imposes a fresh or increased liability, the Commissioner will give written notice to the taxpayer.

### **Voluntary disclosures**

71. For the purposes of this SPS, a "voluntary disclosure" is defined as any amendment request that, if accepted by the Commissioner, would result in an increase in the tax payable by a taxpayer or a decrease in the amount of any loss available to be utilised by the taxpayer.
72. Where a taxpayer makes an amendment request that is a voluntary disclosure, that disclosure must follow the process outlined in SPS 09/02 *Voluntary disclosures*<sup>15</sup> or any SPS issued in replacement. Further information on the voluntary disclosure process may also be found in Parts 3 and 4 of the guide IR280 *Putting your tax returns right*<sup>16</sup> or any guide issued in replacement.
73. Once a taxpayer's voluntary disclosure has been accepted as being valid by the Commissioner, s 113 provides the legislative authority for effecting the reassessment. Generally, a similar approach to that outlined in this SPS will apply, except that the Commissioner will always commit resources to the request (See [47] above).

#### *Shortfall penalties*

74. Where an amendment request that constitutes a voluntary disclosure imposes a fresh liability or increases an existing liability, the taxpayer may also be liable to a shortfall penalty. Whether a shortfall penalty will be imposed and whether the penalty will be reduced to take account of the voluntary disclosure are matters that will be considered as part of the voluntary disclosure process. This is discussed further in SPS 09/02 *Voluntary disclosures*.

### **Related matters**

#### *Investigations*

75. Inland Revenue undertakes various types of investigation activities. For the purposes of this SPS, an investigation means any examination of a taxpayer's financial affairs to verify that they have paid the correct amount of tax and complied with their tax obligations.

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<sup>15</sup> More information on this Statement may be found at [www.ird.govt.nz](http://www.ird.govt.nz) (search keyword "SPS 09/02").

<sup>16</sup> More information on this guide may be found at [www.ird.govt.nz](http://www.ird.govt.nz) (search keyword "IR280").



76. Irrespective of whether there is a current dispute, if the period and tax type relating to an amendment request is already under investigation, the Commissioner will make any appropriate consequential amendments. That is, if the Commissioner is already devoting resources to verifying the correctness of an assessment, all reasonable consequential effects of the investigation (including the amendment request) will be considered as part of that process.
77. The Commissioner may make any consequential adjustments (that is, adjustments not requested by the taxpayer under investigation) to the taxpayer's other assessments or to other taxpayers affected by adjustments resulting from the investigation. The consequential adjustments could relate to the same or different tax types.
78. If the Commissioner agrees with the amendment request, then (subject to the limitations set out below) the amendments will be incorporated into the amended assessment arising from the investigation. The Commissioner cannot amend an assessment to reflect an amendment request before finalising the position for the other issues arising from the investigation. The amendments will be treated in the same way as any other agreed adjustments arising out of the investigation.

*Time limits on increasing assessments*

79. Generally the Commissioner cannot increase previously assessed amounts (or decrease the amount of net loss) after the expiration of four years from the end of the tax year in which the income tax returns were provided (ss 108, 108A).
80. As stated at [71], for the purposes of this SPS, a "voluntary disclosure" is defined as any amendment request that, if accepted by the Commissioner, would result in an increase in the tax payable by a taxpayer or a decrease in the amount of any loss available to be utilised by the taxpayer. Given this, whether the period subject to the voluntary disclosure is time barred is a matter that will be considered as part of that process.

*Time limits on tax refunds*

81. Before the Commissioner is able to refund an amount of overpaid tax, she must first exercise her s 113 discretion. As stated previously in this SPS, where the Commissioner is unable to refund an amount of tax because the period subject to the amendment request is time barred, resources will not be applied to considering the request for that statute-barred period. Generally, the Commissioner is unable to refund an amount of overpaid tax where the four-year period in s 108 of the TAA has expired. For all taxes (other than GST), this rule, together with a number of exceptions to it, is set out in Subpart RM of the Income Tax Act 2007.

*Time limits on GST refunds*

82. As with the refund of other taxes, before the Commissioner makes a refund of overpaid GST she must first decide whether to exercise the s 113 discretion. Where it is decided to apply resources, the general rule is that the Commissioner cannot refund an amount of overpaid GST after the expiry of the four-year period in s 108A of the TAA. The exceptions to this general rule are set out in s 45 of the GST Act.

*Amended assessments after expiry of the four-year time limit for increasing assessments*

83. As noted above, in some instances there are exceptions to the general four-year time limit for the Commissioner either to increase an assessment or make a refund. When a taxpayer requests a refund after the four-year limitation period, in considering the refund request the Commissioner will also incorporate any debit adjustments that



would have been made but for the application of the four-year time limit. This will ensure the correctness of the assessment.

84. Because, generally, the Commissioner cannot increase an assessment outside the four-year limitation period, if the amount of any required debit adjustment exceeds the refund requested by the taxpayer, the amendment will not be made.

#### *Default assessments*

85. If the Commissioner has raised assessments under s 106 of the TAA (commonly known as default assessments) and the taxpayer subsequently files tax returns for those default assessments outside the relevant response periods, the Commissioner will treat the tax returns as amendment requests. The Commissioner will generally amend the assessments under s 113 after confirming that the tax returns contain correct tax positions. In addition, if the taxpayer is within the relevant response periods, they should consider issuing notices of proposed adjustments under s 89D(1) along with their tax returns to preserve their disputes rights against the possibility that the Commissioner may decline the exercise of the s 113 discretion.

#### **What is the relationship between s 113 and s 113A?**

86. Under s 113, errors are generally required to be corrected in the return period in which they arose. However, s 113A allows taxpayers to correct minor errors made in income tax returns (including RWT and NRWT), FBT returns or GST returns in the next return that is due after the discovery of the error.
87. A minor error includes an error that was caused by a clear mistake, simple oversight or mistaken understanding on the taxpayer's part and that, for a single return, causes a discrepancy in the assessment of that return of \$1,000<sup>17</sup> or less. When calculating the \$1,000<sup>18</sup> discrepancy, income tax, FBT and GST returns are each treated separately.
88. While the Commissioner is not prevented from exercising the discretion under s 113 where the taxpayer is able to make the required correction themselves in a later period, the Commissioner's practice is generally not to expend resources in these circumstances. This is because s 113A provides a specific mechanism by which the taxpayer is able to correct the error themselves. As such, the taxpayer does not need to request that the Commissioner amend an assessment under s 113 to make the correction.
89. However, in certain circumstances the Commissioner will exercise the discretion under s 113, notwithstanding that the taxpayer is able to make the required correction using s 113A. Without limiting those circumstances, some examples include:
- Where the error has occurred in a taxpayer's final return for that revenue type and therefore there is no future return in which to make an adjustment under section 113A.
  - Where not correcting the error in an earlier period using s 113 will negatively impact an entitlement of the taxpayer. For example, where making the amendment under s 113 will increase the taxpayer's Working for Families tax credit entitlement from that earlier date.

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<sup>17</sup> Previously \$500. Amended by section 112 of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017, with effect from 1 April 2017.

<sup>18</sup> As above n 17.

90. Taxpayers are not required to notify the Commissioner specifically of the corrections made under s 113A. However, Inland Revenue may review error adjustments as part of its investigation activity to ensure the adjustments were correct. Inland Revenue expects taxpayers to maintain sufficient records to substantiate any adjustments made and explain the reasons that the minor error arose in the first place.
91. For further information regarding the application of s 113A, please see the item *Correction of minor errors in subsequent returns* included in *Tax Information Bulletin* Vol 22, No 1 (February 2010): 30.

### **What is the relationship between s 113 and the proviso to s 20(3) of the GST Act?**

92. When a registered person has not claimed a GST input tax deduction in an earlier taxable period then, under the proviso to s 20(3) of the GST Act, the person can claim that deduction in a later period. This contrasts with the treatment of the same error afforded by s 113, which would be to correct the earlier GST return to which the input tax deduction related.
93. While the Commissioner is not prevented from exercising the discretion under s 113, the presence of the specific provision in s 20(3) for this type of GST error means that the Commissioner's practice is generally not to exercise the discretion in these circumstances. Because s 20(3) provides taxpayers with a specific mechanism to correct their failure to claim the GST input tax deduction, the Commissioner's view is that a general provision such as s 113 should not be used. For further guidance see QB 09/04 *The relationship between section 113 of the TAA and the proviso to section 20(3) of the GST Act when a registered person has not claimed an input tax deduction in an earlier taxable period*.<sup>19</sup> This outcome is considered to be more consistent with the scheme of the legislation and in particular s 15B, which requires that taxpayers take responsibility for correct assessments wherever possible.

### **Challenge rights**

94. A taxpayer cannot challenge the exercise of the Commissioner's discretion under s 113 by commencing proceedings in a hearing authority.<sup>20</sup> However, the exercise of this discretion (or the decision not to make the amendment requested) may be subject to judicial review.

### **Reconsideration and complaint rights**

95. If a taxpayer is concerned that their circumstances have not been given proper consideration, they should raise their concern with the staff member that considered their request and ask for the decision to be reviewed by a more senior officer.
96. 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 <http://www.ird.govt.nz/how-to/disputes/findout-disputes-cmplts-mgmt-srv.html> or phone 0800 274 138 (Monday to Friday between 8am and 5pm).

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<sup>19</sup> More information on this statement may be found at [www.ird.govt.nz](http://www.ird.govt.nz) (search keyword "QB 09/04").

<sup>20</sup> Section 138E(1)(e)(iv)

This Standard Practice Statement is signed on 01 April 2016

**Graham Tubb**  
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## Appendix

### Legislation

Of particular relevance to the Commissioner when considering requests to amend assessments are the following sections of the TAA:

#### **Section 6 Responsibility on Ministers and officials to protect integrity of tax system**

- (1) Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of taxes and other functions under the Inland Revenue Acts are at all times to use their best endeavours to protect the integrity of the tax system.
- (2) Without limiting its meaning, **the integrity of the tax system** includes-
  - (a) taxpayer perceptions of that integrity; and
  - (b) the rights of taxpayers to have their liability determined fairly, impartially, and according to law; and
  - (c) the rights of taxpayers to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other taxpayers; and
  - (d) the responsibilities of taxpayers to comply with the law; and
  - (e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of taxpayers; and
  - (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.

#### **Section 6A Commissioner of Inland Revenue**

...

- (2) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.
- (3) In collecting the taxes committed to the Commissioner's charge, and notwithstanding anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—
  - (a) the resources available to the Commissioner; and
  - (b) the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and
  - (c) the compliance costs incurred by taxpayers.

#### **Section 15B Taxpayer's tax obligations**

A taxpayer must do the following:

- (aa) if required under a tax law, make an assessment:
- (a) unless the taxpayer is a non-filing taxpayer, correctly determine the amount of tax payable by the taxpayer under the tax laws:
- (b) deduct or withhold the correct amounts of tax from payments or receipts of the taxpayer when required to do so by the tax laws:
- (c) pay tax on time:
- (d) keep all necessary information (including books and records) and maintain all necessary accounts or balances required under the tax laws:
- (e) disclose to the Commissioner in a timely and useful way all information (including books and records) that the tax laws require the taxpayer to disclose:
- (f) to the extent required by the Inland Revenue Acts, co-operate with the Commissioner in a way that assists the exercise of the Commissioner's powers under the tax laws:
- (g) comply with all the other obligations imposed on the taxpayer by the tax laws:

- (h) if a natural person to whom section 80C applies, inform the Commissioner that the person has not received an income statement for a tax year, if the income statement is not received by the date prescribed in section 80C(2) or (3):
- (i) if the taxpayer is a natural person, correctly respond to any income statement issued to the taxpayer.

### **Section 113      Commissioner may at any time amend assessments**

- (1) Subject to sections 89N and 113D, the Commissioner may from time to time, and at any time, amend an assessment as the Commissioner thinks necessary in order to ensure its correctness, notwithstanding that tax already assessed may have been paid.
- (2) If any such amendment has the effect of imposing any fresh liability or increasing any existing liability, notice of it shall be given by the Commissioner to the taxpayer affected.

Other relevant legislative provisions are:

- Sections 78B, 89C, 89D, 89N, 106(1), 107A, 108, 108A, 113A, 113D, 138E, 141FB, and 141G of the TAA.
- Subpart RM 2 of the Income Tax Act 2007.
- Sections 19C(8), 20, 45 and 46 of the GST Act.
- Section 202 of the Student Loan Scheme Act 2011.

### Published Statements

This SPS should be read in conjunction with the following statements published by the Commissioner and any issued in replacement:

- SPS 09/02 *Voluntary Disclosures* and SPS 06/03 *Reduction of shortfall penalties for previous behaviour*.
- IS 10/07 *Care and Management of the taxes covered by the Inland Revenue Acts – Section 6A(2) and (3) of the Tax Administration Act 1994*.
- QB 09/04 *The relationship between section 113 of the TAA and the proviso to section 20(3) of the GST Act when a registered person has not claimed an input tax deduction in an earlier taxable period*.
- *Correction of minor errors in subsequent returns (Tax Information Bulletin Vol 22, No 1 (February 2010): 30)*.
- *Status of the Commissioner's advice (Tax Information Bulletin Vol 24, No 10 (December 2012): 86)*.