

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 \$1,000¹⁷ or less. When calculating the \$1,000¹⁸ 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.

¹⁷ 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.

¹⁸ 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*.¹⁹ 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.²⁰ 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).

¹⁹ More information on this statement may be found at www.ird.govt.nz (search keyword "QB 09/04").

²⁰ Section 138E(1)(e)(iv)

This Standard Practice Statement is signed on 01 April 2016

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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).*