

STANDARD PRACTICE STATEMENT > RETURNS AND DEBT COLLECTION

Student loan repayment – options for relief

Issued: November 2020

SPS 20/05

Standard practice statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

This standard practice statement updates and replaces SPS 11/03 Student Loans - Relief from repayment obligations. This replacement standard practice statement reflects the Student Loan Scheme Act 2011 and changes introduced by the Inland Revenue transformation programme to encourage borrowers to self-manage student loans via the myIR secure online service.

START DATE

10 Nov 2020

REPLACES: SPS 11/03

Table of Contents

Introduction.....	2
Application.....	2
Standard practice.....	2
Summary.....	2
Detailed discussion.....	3
Request for relief.....	3
Relief options.....	4
Relief from small amounts.....	4
Reduce a payment obligation.....	4
Hardship relief: serious hardship and other special reasons.....	6
Entering into an instalment arrangement.....	8
Refund any amount paid.....	9
Relief from late payment interest and penalties.....	9
Consideration of requests for relief.....	10
Reviewing a decision.....	11
References.....	12
Legislative References.....	12

Introduction

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

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

All legislative references in this Statement refer to the Student Loan Scheme Act 2011, unless otherwise specified.

Application

This Statement applies from the date of signing. It replaces SPS 11/03: *Student Loans – relief from repayment obligations*, which was published in *Tax Information Bulletin*, Vol 23, No 2 (March 2011).

Standard practice

Summary

1. Requests for relief are generally not required by any specific time. However, a request for anticipated hardship for a future year's obligations should be received by Inland Revenue on or before 31 March in the current tax year.

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

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

2. Requests will be considered based on a borrower's current or future ability to meet their student loan repayment obligation. In considering a request, the Commissioner will look at all options available to a borrower to enable them to meet their loan repayment obligations.
3. When providing relief, the Commissioner may:
 - refrain from issuing a notice of assessment, and may write off a student loan repayment obligation not more than \$20;
 - refrain from the collection of any student loan repayment obligation payable that is more than \$20 but less than \$334 (excluding late payment interest);
 - reduce any amount that must be paid by a borrower for the current tax year, or the next tax year;
 - reduce a repayment obligation for a previous tax year (the amount not collected is capitalised and will remain on their loan);
 - agree to an instalment arrangement to repay an unpaid amount;
 - refund any amount paid for the previous or current tax year;
 - cancel some or all the late payment interest if it would be equitable to do so.

Detailed discussion

Request for relief

4. Borrowers are encouraged to contact Inland Revenue at the earliest opportunity if they think that they may have trouble meeting their repayment obligations on time, so that the options for payment and loan relief can be discussed³.
5. Requests can be made through the self-service options available in Inland Revenue's myIR Secure Online Services, by telephone or other manner acceptable to the Commissioner.
6. To ensure there is a record of a request made by a borrower, the ability to accept requests by telephone is limited to calls that are received by Inland Revenue at a site that has call recording. That can be achieved by calling one of Inland Revenue's 0800 numbers. Where a call is received by a site that does not have call recording, the

³ If a student loan borrower also has a tax debt or a child support debt, they should refer to [SPS 18/04](#) Options for relief from tax debt or [SPS 19/05](#) Options for relief from Child Support debt.

borrower may be asked to put their request through use of the myIR Secure Online Services or by letter.

7. A borrower requesting relief should clearly advise why they cannot make loan repayments as required or why they think relief should be given for some other special reason. Each application will be considered on its own merits. The Commissioner may ask the borrower to provide further information in support of their request.

Relief options

Relief from small amounts

8. For small amounts owed, the Commissioner:
 - will not issue an assessment nor collect⁴ a student loan repayment obligation, if the amount payable is \$20 or less. However, this discretion will not generally apply to situations where borrowers have not provided their employer a "SL" Tax Code Declaration and a pay period student loan obligation repayment shortfall occurs as a consequence. Alternatively, when a borrower's consolidated loan balance is \$20 or less at the end of the year, a write-off will occur at that date; or
 - if the amount is more than \$20 but less than \$334 (excluding late payment interest), the Commissioner may choose to not collect the small amount if the due date for payment has passed. However, the amount not collected will remain on the loan balance and where applicable will accrue interest.

Reduce a repayment obligation

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

Salary and wage earners

10. If a borrower is a salary and wage earner, their repayment obligation is determined on a pay period basis. If the Commissioner grants hardship relief by reducing the borrower's repayment obligation, she will issue the borrower with a special repayment deduction rate certificate that varies the rate of payment for a current or future year to reflect the reduced repayment obligation.
11. Relief is also available via a repayment exemption for full-time students who also work and earn under the annual repayment threshold. An exemption applies only to borrowers' who receive salary or wages or pre-taxed income, and any untaxed income is less than \$500. Eligible borrowers may request an exemption for a tax year, so that their

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

earnings do not have student loan repayment deductions made by an employer, when their pay period earnings would otherwise prompt loan repayments.

12. Similarly, full-time student borrowers with more than one employer and whose main income is below the student loan repayment threshold can apply for a reduced deduction rate on their secondary employment earnings for any remaining unused repayment threshold. These secondary income payment reductions only apply on a quarterly basis and a new request is required if borrowers want a reduced payment rate extended for any quarterly unused repayment threshold amount that is available for offset against pre-taxed income.
13. The borrower may request Inland Revenue send a certificate directly to their employer, or they will need to give the certificate received to their employer, who can then apply a reduced rate for, or exemption from, a student loan repayment.
14. The amount not collected because of a repayment rate reduction will remain on the loan balance.

Income from other sources

15. If a borrower receives income from other sources (other than or in addition to their salary and wages) of \$500 or more, their repayment obligation is the amount of their student loan repayable determined on their adjusted net income for a tax year.
16. If the Commissioner grants repayment relief, the percentage payable by the borrower (for receiving income that is not subject to PAYE) will be reduced.
17. The amount not collected because of a reduction of a repayment obligation will remain on the loan balance.

Temporary repayment suspension

18. A borrower who intends to be overseas for 184 days or more, may request a temporary repayment suspension⁵ (formally called a repayment holiday). A request must be made while they are a New Zealand based borrower and they are required to nominate a contact person who resides in New Zealand for the period of their absence from New Zealand. Borrowers can apply for a temporary repayment suspension in myIR or by calling us.

⁵ Further information on how to make a request is available at the Inland Revenue website <https://www.ird.govt.nz/student-loans/what-happens-to-my-student-loan-when-i-go-overseas/temporary-repayment-suspension-for-student-loans>

Commissioner may treat certain borrowers as being physically in New Zealand

19. Borrowers can apply to keep a student loan interest free overseas, when they are:
- unexpectedly delayed when returning to New Zealand
 - unexpectedly required to travel after having returned to New Zealand
 - studying overseas
 - working overseas for the government or sent overseas for work by a business that has a permanent establishment in New Zealand, and borrowers have a permanent place of abode only in New Zealand.
 - Borrowers accompanying a spouse or a partner overseas may also qualify
 - receiving a qualifying government-funded scholarship for study or an internship
 - working as a volunteer or for token payment for a charity
 - living in Niue, Cook Islands, Tokelau or Ross Dependency
 - have a serious illness, injury or disability that means you're not able to engage in paid work nor meet your repayment obligation.
20. Further information on how to make an application can be found at <https://www.ird.govt.nz/student-loans/when-can-i-keep-my-student-loan-interest-free-overseas>

Hardship relief: serious hardship or other special reasons

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

Serious hardship

22. If the Commissioner is satisfied a repayment obligation will cause serious hardship to a borrower or there are special reasons that make it fair and reasonable to provide relief, the Commissioner may:
- refund⁶ any amount that was paid that is considered more than a borrower can afford to pay without causing hardship; and/or

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

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

Other special reasons

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

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

Example 1

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

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

Example 2

A borrower has received a lump sum payment from the Accident Compensation Corporation to provide for alterations to their home to improve the borrower's mobility around their home. The borrower has unpaid student loan obligations for the previous year which they have no prospect of making an immediate payment of the loan debt.

As the ACC lump sum payment has a specified purpose of promoting a borrower's mobility and preserve their independent living standard, the Commissioner will consider relief under the other special reasons provision. The borrower's repayment obligation would likely be reassessed to what they can afford to pay and the unpaid balance would remain as part of the loan balance.

Example 3

A borrower has access to savings, but they intend to use those funds as a deposit to purchase a house. The Commissioner is unlikely to provide relief when funds are available to pay a debt. In considering this, the Commissioner will give regard to promoting compliance, maintaining the integrity of the tax administration and that other borrowers would have reduced savings as a consequence of meeting their repayment obligations.

Entering into an instalment arrangement

29. As noted above, borrowers who are likely to experience hardship in meeting their repayment obligations are encouraged to contact Inland Revenue early to obtain an agreed solution, particularly as late payment interest is charged on defaulted repayment obligations. Early contact may minimise late payment interest charged on any amount that remains unpaid after the due date for payment.
30. When a borrower complies with an agreed instalment arrangement, a lower late payment interest rate⁷ will apply to the unpaid amount for each month while an instalment arrangement applies.

⁷ When a borrower meets their obligations in an instalment arrangement, late payment interest payable is reduced from the base rate plus 4% to the base rate plus 2% interest.

31. The Commissioner may agree to an instalment arrangement where a borrower can demonstrate that they will experience hardship if they are required to pay their repayment obligation in full but can make a partial payment.
32. The Act imposes no time limit on when an instalment arrangement must be completed. However, the Commissioner considers that instalment arrangements should be for as short a period as possible without causing serious hardship to a borrower.
33. When the Commissioner enters into an instalment arrangement, the terms will be confirmed with the borrower via myIR or by letter to ensure that both parties clearly understand their obligations and for future reference by the borrower.
34. A borrower may renegotiate an instalment arrangement at any time. However, the Commissioner may only do so after two years have elapsed from the date the instalment arrangement was entered, as long as the borrower maintains the terms of their arrangement.

Refund amount paid

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

Relief from late payment interest and penalties

36. A penalty and late payment interest may be imposed if a borrower does not meet their student loan repayment obligations in full and on-time. Late payment interest will also compound monthly until the arrears are paid.
37. Upon application, and depending on the borrower's circumstances, the Commissioner can cancel some or all of the late payment interest if it would be equitable to do so. The Commissioner will only consider an application for the cancellation of a penalty and late payment interest once the initial repayment obligation has been paid.
38. The Commissioner has no discretion to cancel base interest charged on student loans held by overseas based borrowers, that will remain payable.
39. The Commissioner will cancel a penalty and late payment interest when it is considered equitable to do so, after looking at the reasons for late payment. For example, a penalty and late payment interest may be cancelled when a payment default was:
 - the result of a genuine error;
 - beyond the control of the borrower or the borrower's agent; or
 - any other situation in which the Commissioner considers it is equitable to do so.
40. When considering an application to cancel a penalty or late payment interest, the Commissioner will consider the borrower's previous loan repayment record, including whether they have paid their student loan repayment obligations as soon as practicable.

The borrower's overall loan compliance history will also be a factor in deciding whether to cancel late payment interest.

Consideration of requests for relief

41. Where it is apparent a borrower can pay overdue repayment obligations immediately, the Commissioner will not enter into an arrangement. For example, if the borrower has access to investment funds, beneficial interests, shareholder current accounts or trusts, the Commissioner expects those funds will be used to pay the overdue repayment obligation. A decision will be based on the financial information provided by a borrower along with any further enquiries the Commissioner considers necessary.
42. The Commissioner will look at all options available for collection of unpaid repayment obligations when considering a request for relief. Options may include requesting that the borrower sells assets or arranges other finance to pay their unpaid repayment obligations more promptly.
43. Despite any application for relief, the Commissioner may make a counteroffer based on the information available and what is considered appropriate for a borrower's circumstances.
44. If the Commissioner is satisfied that meeting a repayment obligation will cause serious hardship to a borrower or there are special reasons that make it fair and reasonable to provide relief, the Commissioner may:
 - refund⁸ any amount that had been paid that is considered more than a borrower should have been expected to pay without causing hardship, and/or
 - reduce the amount that must be paid, and so enable the borrower to meet their adjusted repayment obligation.
45. The unpaid balance of the original student loan repayment obligation that is not recovered when providing hardship relief, remains as part of the loan account.
46. When the Commissioner agrees to provide relief, the terms and details of the adjusted student loan repayment obligation and other matters (eg, refunds, changed tax code for PAYE purposes) will also be confirmed, with a borrower or a nominated contact person by letter. If registered for myIR they will receive a notification of this letter to view in their account unless they have asked communications to be directed to a tax agent.

⁸ However, any overpayment of a loan repayment obligation for years prior to the year preceding the current year, are not refundable to the borrower and will be offset against the student loan balance (see section 122(2)).

Reviewing a decision

Change in circumstances (for a reduced payment obligation)

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

Misleading or false information

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

Service feedback

50. If a borrower 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.
51. If a borrower is still not satisfied with the level of service they receive, they can obtain more information about the Inland Revenue complaints management service at <https://www.ird.govt.nz/contactus/complaints-disputes-compliments/complaints> or phone 0800 274 138 (Monday to Friday between 8am and 5pm).

Challenges

52. A borrower may challenge a decision⁹ by the Commissioner to not to grant relief or enter into an instalment arrangement by commencing proceedings to the Taxation Review Authority, on the ground that the decision is not fair and reasonable.

⁹ Dispute process must be completed before challenge is made. Refer to Standard Practice Statement 16/06 Disputes resolution process commenced by a taxpayer for further information.

This Standard Practice Statement is signed on 10 November 2020.

Rob Falk

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References

Legislative References

Student Loan Scheme Act 2011, s 141, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154.

Tax Administration Act 1994, s 177A, 177B, 177CA.