

## **Standard Practice Statement**

**SPS 18/04**

### **Options for relief from tax debt**

#### **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 (the “Statement”) sets out the Commissioner’s practice when considering the options for removing or deferring the obligation to pay tax, interest and/or penalties under the Tax Administration Act 1994. The options available to the Commissioner are to write off amounts, enter into an instalment arrangement, remit amounts, or a combination of these options.

Unless otherwise specified, all legislative references in this Statement refer to the Tax Administration Act 1994.

#### **Application**

This Statement applies to relief considered on or after 22 August 2018. It replaces 3 standard practice statements: SPS 11/01 – *Instalment arrangements for payment of tax*, SPS 15/02 – *Remission of penalties and use-of-money interest*, and SPS 15/03 – *Writing off outstanding tax*.

This Statement does not extend to child support obligations or student loan arrears. For more information on these, see SPS 11/02 *Child support debt – Requesting an instalment arrangement* and SPS 11/03 *Student Loans – Relief from repayment obligations*, or any statements issued in replacement.

## Terminology

In this Statement the following terms are used. Please note their intended meaning for the purposes of this Statement:

**Relief** is to be interpreted in its context. It can refer to all forms of assistance covered by this Statement. It can include entering into instalment arrangements, writing off amounts owing under any ground, and the remission of interest and/or penalties.

**Financial relief** is a subset of "relief" and refers to relief granted as a result of financial hardship (that is, entering into an instalment arrangement, or writing off amounts owing when the test for serious hardship is met).

**Interest** refers to use-of-money interest payable by the taxpayer to the Commissioner under part 7 of the Act.

**Amounts owing** or **outstanding amounts** refer to any amounts of tax, interest and/or penalties which the taxpayer owes to Inland Revenue.

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# Standard practice

## Summary

1. Taxpayers are required to pay their tax in full and on time. When they fail to do so late payment penalties may be applied and act as an incentive for taxpayers to comply with the law. In addition, interest may be payable to compensate the Commissioner for the loss of use of the money, and to encourage taxpayers to pay the correct amount of tax on time.
2. In certain situations however, the Commissioner may be able to provide assistance to taxpayers if they are not able to pay on time, or if the imposition of penalties and/or interest is not appropriate. Depending on the circumstances the Commissioner may be able to write off or remit amounts owing (so they do not need to be paid), or enter into an instalment arrangement (so the amount is paid over time rather than immediately). This Statement discusses the options that are available.
3. Where there is discretion about whether or not to grant relief, this decision rests with the Commissioner; while a taxpayer can apply for relief it is not available as of right. In addition to granting or denying relief, the Commissioner may choose to not take any immediate action in relation to a debt. This approach of waiting may be **appropriate if, for example, the taxpayer's financial situation is not clear** or the Commissioner considers that an unquantifiable amount is expected to be received by the taxpayer in the near future.
4. The options available to the Commissioner are not to be considered in isolation. For any amount of debt, the Commissioner may consider a combination of options. This is the case even if a taxpayer only requests one particular form of relief.
5. The options, and the extent to which those options are available, will depend on the particular circumstances of the taxpayer. The majority of options involve the Commissioner exercising her discretion and various factors will be taken into consideration to reach a decision. These factors are referred to throughout the Statement and are listed at the end.
6. Here is a summary of the relief options available:
  - Financial relief can be granted when a taxpayer cannot meet their payment obligations. The options available for financial relief are for the Commissioner to collect the amounts owing over a period of time (through an instalment arrangement), or to not collect the amount owing (that is, write off the amount), or a combination of the two options (that is, write off some of the debt and enter into an instalment arrangement for the remainder). An amount may be written off if collecting it **would place the taxpayer in "serious hardship"**.
  - Where an amount is considered irrecoverable, the Commissioner has the discretion to write it off.
  - The Commissioner may write off amounts if collecting the amounts owing is **considered to be an inefficient use of Inland Revenue's resources**.

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- When a taxpayer is made bankrupt, is liquidated or their estate has been distributed, the Commissioner must write off amounts that cannot be recovered. This is not discretionary.
  - The Commissioner may permanently write off outstanding tax when the balance of the tax payable is \$20 or less.
  - Certain penalties may be remitted when an event or circumstance has occurred **which is beyond the taxpayer's control. The remission may be granted if the event/circumstance provides a reasonable justification that the taxpayer did not meet their obligations (for which they were given the penalty), so long as the taxpayer has corrected the failure to comply as soon as practicable.** Common examples of events or circumstances are a death or illness of a family member.
  - Interest may be remitted when there has been an emergency event declared in an Order in Council which prevented the taxpayer from making the payment. Common examples of emergency events are floods or earthquakes. Before remitting interest under this ground the Commissioner must be satisfied that:
    - the taxpayer applied for the remission and paid the tax owing as soon as practicable;
    - the conditions of the Order in Council are met; and
    - the emergency event means that remitting the interest is fair.
  - Interest or certain penalties may be remitted if to do so is consistent with the **Commissioner's duty to collect the highest net revenue over time.**
7. This Statement applies where amounts of tax, penalty or interest were correctly imposed, but there are reasons for writing off or remitting them, or deferring their payment. Where amounts were incorrectly charged (for example, resulting from an error by Inland Revenue), they will be reversed rather than remitted or written off. Where an amount has been written off, the Commissioner may reverse the write off if the amount was written off on the basis of false or misleading information provided by the taxpayer.
  8. For interest, note that section 120W of the Act provides that a taxpayer is not liable to pay interest on unpaid tax to the extent that the interest arises because the **taxpayer relied on a "Commissioner's official opinion"**<sup>1</sup>, which includes opinions or official statements of the Commissioner about the taxpayer's specific situation. Section 120W does not apply to misinterpretations of what is written in an Inland Revenue publication. If section 120W applies, the interest is not written off or remitted, it is simply never imposed.
  9. Finally, by way of completeness, in some cases an amount may be written off and the underlying assessment is later amended to reduce the amount of tax payable. In this case an adjustment may be required to the amount written off to ensure that an unintended credit is not created.

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<sup>1</sup> "Commissioner's official opinion" is defined in section 3 of the Act.

## Detailed discussion

### Overview of the collection of tax and options for relief

10. The collection of tax is fundamental to the successful operation of the tax system. By ensuring that taxpayers are committed to paying tax on time and in full the integrity of the tax system is protected, and taxpayers understand that they will be treated fairly, consistently, impartially and in accordance with the law. This is recognised in the legislation. Section 15B(c) of the Act specifically provides that a taxpayer is obliged to pay their tax on time. In addition, section 176 of the Act sets out the general obligation that the Commissioner must maximise the recovery of outstanding tax from a taxpayer. Where tax is not paid on time, penalties and/or interest may be payable.
11. There are some situations, however, when a taxpayer has amounts owing and it may be appropriate to provide relief. These are summarised in the table below:

| <b>Grounds for relief</b>                                | <b>Obligation that can be subject to relief</b> | <b>Form of relief</b>                    | <b>Relevant factors (discussed in paragraph 82)</b> | <b>Legislative authority (sections of the Act)</b> |
|--|---|--|---|--|
| Financial relief – unable to make immediate payment      | Tax, interest and/or penalties                  | Instalment arrangement (delayed payment) | A – I (all)   | Sections 177, 177A, 177B                           |
| Financial relief – serious hardship                      | Tax, interest and/or penalties                  | Write-off (no payment required)          | A – I (all)   | Sections 177, 177A, 177C                           |
| Unrecoverable amount                                     | Tax, interest and/or penalties                  | Write-off (no payment required)          | A – F   | Section 177C(1)                                    |
| Inefficient use of <b>Commissioner’s</b> resources       | Tax, interest and/or penalties                  | Write-off (no payment required)          | A – E, G, H   | Section 176  |
| Bankruptcy, liquidation or the distribution of an estate | Tax, interest and/or penalties                  | Write-off (no payment required)          | None – no discretion                                | Section 177C(2) and (4)                            |
| Small amounts of refunds or tax payable                  | Tax, interest and/or penalties                  | Write-off (no payment required)          | C – E   | Section 174AA                                      |
| Event/circumstance beyond the <b>taxpayer’s control</b>  | Penalties                                       | Remission (no payment required)          | C, E - H  | Section 183A                                       |
| Declared emergency event                                 | Interest  | Remission (no payment required)          | C, E, F   | Section 183ABA                                     |
| Promote compliance and collect the highest net revenue   | Penalties and/or interest                       | Remission (no payment required)          | C, E – I  | Section 183D                                       |

12. For each of these grounds an explanation of the legislative criteria and when the relief is likely to be granted by the Commissioner are discussed below. The Commissioner has the discretion to grant relief for many of the situations listed above, and the exercise of this discretion will depend on a number of factors discussed in this Statement.
13. The action taken by the Commissioner for an outstanding amount may be a combination of granting one or more forms of relief outlined above, and/or collecting some or all of the amounts owed. In addition, the decision by the Commissioner may be different to the form of relief originally requested by the taxpayer. For example, a taxpayer may apply for an amount of debt to be written off as they claim that paying it will put **them in serious hardship**. **After considering the taxpayer's circumstances** the Commissioner may instead decide to collect a portion of it, enter into an instalment arrangement for a portion, and write off the remainder.
14. If, **after considering the taxpayer's circumstances**, the Commissioner concludes that relief under the Act is not appropriate the options available are to collect the amount owing, or if failing to do so, to apply to have the taxpayer made bankrupt (or liquidated if they are a company).
15. The care and management rules in sections 6 and 6A of the Act support this balance of, on the one hand maximising the collection of tax and, on the other hand of relieving taxpayers from their duty to pay in appropriate situations.<sup>2</sup> In particular:
  - **Section 6 requires that the Commissioner's best endeavours are used to protect the integrity of the tax system.** In carrying out this responsibility, the Commissioner is required to consider a range of factors including:
    - taxpayer perceptions of that integrity;
    - the rights of taxpayers to have their liability determined fairly, impartially, and according to law;
    - the responsibilities of taxpayers to comply with the law; and
    - ensuring the law is administered fairly, impartially, and according to law.
  - Section 6A(3) provides that it is the duty of the Commissioner to collect the highest net revenue that is practicable within the law, having regard to the resources available to the Commissioner, the importance of promoting compliance (especially voluntary compliance) by all taxpayers with the Inland Revenue Acts, and the compliance costs incurred by taxpayers. This duty requires the Commissioner to collect the highest net revenue **over time**. This means the Commissioner must consider the short and long-term implications of the various options open to her for the collection of outstanding amounts and debt relief.

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<sup>2</sup> Interpretation Statement IS 10/07 *Care and management of the taxes covered by the Inland Revenue Acts* provides the Commissioner's view on the application of the care and management provisions. This statement is published in *Tax Information Bulletin* Vol 22, No 10 (November 2010): 17 and available on Inland Revenue's website, [www.ird.govt.nz](http://www.ird.govt.nz) (keyword: Interpretation statement 10/07)

## **Financial relief: Entering into an instalment arrangement, or writing off amounts for serious hardship**

### ***General rules***

16. When a taxpayer faces financial difficulty in paying their taxes they can request that the Commissioner grant them financial relief. The relief options available under the legislation are to either have the amounts of tax, interest and/or penalties collected at a later point in time (through an instalment arrangement), or for the amounts to not be recovered by the Commissioner (that is, to apply to have the tax written off), or a combination of both options. Section 176 of the Act allows the Commissioner to not recover outstanding amounts to the extent that it would place a natural person taxpayer in serious hardship.
17. When relief is provided by way of a combination of an instalment arrangement and write off, the Commissioner will write off the agreed amount at the beginning of the instalment arrangement.
18. **The words "to the extent that" in section 176 are important, and** mean that the Commissioner may apportion an amount of debt so that the maximum is collected either immediately or over time and only the amount that cannot be recovered is written off. This approach ensures the Commissioner meets the obligation to maximise the recovery of outstanding tax, and her care and management obligations.
19. When an instalment arrangement is entered into, the period of the arrangement should be as short as possible, but not so short as to put the taxpayer into serious hardship. Instalment arrangements can consist of one payment or multiple payments over a period of time. If there are multiple payments being made, they can consist of equal or varied amounts, and they can be made at regular or irregular intervals. Interest will continue to apply during the term of the arrangement.
20. One of the important factors to consider for granting any form of financial relief is serious hardship. When considering serious hardship the Commissioner must follow a 2-step approach and the steps below clearly dictate that two separate decisions must be made. (The following two steps are adapted from the process set out by the judge in the case of *P v Commissioner of Inland Revenue*).<sup>3</sup>

### ***Step 1 – Is there serious hardship?***

The first step considers whether recovery of the amount owing would place the taxpayer in serious hardship. **The legislation defines what "serious hardship" is.**<sup>4</sup> After allowing for payment of outstanding tax, interest and penalties, the question the Commissioner must consider is:

### **Is the taxpayer likely to have significant financial difficulties because one or more of the following factors is likely to arise after the date that the taxpayer requests financial relief? :**

- a) the taxpayer or their dependant has a serious illness;
- b) the taxpayer would likely be unable to meet minimum living expenses estimated according to normal community standards of cost and quality;
- c) the taxpayer would likely be unable to meet the cost of medical treatment for an illness or injury of the taxpayer, or of their dependant;

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<sup>3</sup> P v Commissioner of Inland Revenue [2015] NZHC 2293.

<sup>4</sup> Section 177A(2).

- d) the taxpayer would likely be unable to meet the cost of education for their dependant; or
- e) any other factor that the Commissioner thinks relevant would likely arise.

**If the answer is "yes", the test for serious hardship is met.** Step 2 must be considered to determine whether the Commissioner should write off the outstanding amounts. An instalment arrangement cannot be entered into to the extent that the arrangement would place the taxpayer in serious hardship.

If the answer is "no", **the test for serious hardship is not met and the outstanding amounts cannot be written off on the ground of serious hardship.** The Commissioner may consider another ground or form of relief from the table in paragraph 11 (including entering into an instalment arrangement), or require that the outstanding amount be paid.

Note that in Step 1, the Commissioner must not take into account compliance or non-compliance with tax obligations when determining whether the taxpayer suffers serious hardship. Whether or not the taxpayer has met their tax obligations in the past is irrelevant for Step 1. Serious hardship also does not take into account whether the taxpayer may become bankrupt, nor **does it take into account the taxpayer's ability to maintain entertainment and their social activities.** It should also be noted that serious hardship can only apply to natural person taxpayers or shareholders of relief companies.<sup>5</sup>

#### ***Step 2 – What relief, if any, should be granted?***

If the Commissioner considers that requiring the taxpayer to pay any or all of the outstanding amounts would place the person in serious hardship, the Commissioner must consider how to best deal with the debt. The options are to write off the outstanding debt (in full or in part), or allow the debt to remain and take steps to bankrupt the taxpayer.

At step 2, the Commissioner will have regard to how the debt originally arose, and the **person's** compliance with tax obligations as that is clearly material to whether the Commissioner should grant relief. When making this decision at step two the Commissioner will consider all of the factors, as relevant, described in paragraph 82 below.

- 21. The Commissioner cannot write off amounts owing (including the shortfall penalty imposed) when a taxpayer is liable to pay a shortfall penalty for an abusive tax position or evasion or a similar act, in relation to the outstanding tax.<sup>6</sup> In these cases the Commissioner will require payment, or may apply for the taxpayer to be put into bankruptcy or liquidation.
- 22. The definition of serious hardship refers to **"normal community standards of cost and quality"**. While these standards must be considered in the context of the wider community of New Zealand, the actual expenditure of taxpayers in different parts of **the country may vary. When calculating a taxpayer's minimum living expenses, the Commissioner will consider the reasonable costs of food, heating and accommodation**

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<sup>5</sup> Section 3(1) defines a "relief company", in relation to a taxpayer, as a company in which:

- o the taxpayer owns 50% or more of the shares; or
- o the taxpayer and 1 other person jointly own 50% or more of the shares; or
- o the taxpayer is a shareholder-employee, and the company has five or fewer natural persons whose total voting or market value interests in the company exceed 50% and it is not a special corporate entity.

<sup>6</sup> Section 177C(3). Note that "liable to pay" does not mean the liability must have been assessed, imposed, or otherwise quantified. All that is required is that the criteria in section 141D or section 141E of the Act are met.



in that taxpayer's area, based on information provided by Statistics New Zealand. However this is just a starting point and the Commissioner will have regard to expenditure incurred that is outside the norm due to a taxpayer's specific circumstances.

23. The definition of serious hardship also refers to a "dependant". Whether a person is a taxpayer's dependant will be determined on a case-by-case basis. The Commissioner will consider whether the person depends on the taxpayer for financial support, what degree of financial support is provided, and to what extent providing financial support affects the taxpayer's ability to meet minimum living expenses according to normal community standards.
24. When a payment is not made by the date it is due<sup>7</sup>, late payment penalties may be payable and consist of the following components:
- an initial late payment penalty (firstly, a 1% penalty is applied the day after the payment was due, and secondly a 4% penalty is applied 7 days after the payment was due); and
  - an incremental late payment penalty of 1% which is applied every month.
25. In certain situations, some of these penalties may not be imposed. If a taxpayer anticipates they will not be able to make payments on time, they should contact Inland Revenue as soon as possible. If the application for financial relief is made before the due date and relief is granted, fewer penalties may be applied. The table below shows when a penalty will be applied (✓), and when a penalty will not be applied (X), and the relevant sections of the Act:

|   | <b>1% initial late payment penalty; one-off</b> | <b>4% initial late payment penalty; one-off</b>   | <b>1% incremental late payment penalty; monthly</b>   |
|---|---|---|---|
| <b>Taxpayer applies for financial relief before due date<sup>8</sup>, and relief is granted</b> | ✓<br>(s 139BA(1))                               | X<br>(s 139BA(1))   | X<br>(s 139BA(2))   |
| <b>Taxpayer applies for financial relief on or after due date, and relief is granted</b>        | ✓<br>(s 139B(2)(a)(i))                          | ✓<br>(s 139B(2)(a)(ii))   | X<br>(s 139BA(2))   |
| <b>Taxpayer applies for financial relief at any time, and relief is declined</b>                | ✓<br>(s 139BA(6))                               | ✓<br>(s 139BA(6))   | ✓<br>(s 139BA(6))   |
| <b>Instalment arrangement entered into</b>  | ✓<br>(s 139BA(1))                               | X<br>If relief was requested before the due date<br>(s 139BA(1))<br><br>✓<br>If relief was requested after the due date<br>(s 139B(2)(a)(ii)) | X<br>Not applied if the taxpayer complies with the instalment arrangement<br><br>(s 139BA(4)) |

<sup>7</sup> A payment is due on either: the due date, or if the amount has a new due date set under section 142A, then the collection date. Section 142A applies where the Commissioner makes a new or amended assessment of tax and requires that the Commissioner fix a new date for the payment of tax. The new date must be at least 30 days after the new assessment or reassessment is issued.

<sup>8</sup> As noted above, due date can mean either the date it is due, or if the amount has a new due date set under section 142A, then the collection date.

26. When an instalment arrangement is entered into, interest will continue to apply.
27. Before granting an application for financial relief the Commissioner will almost always require that any outstanding returns be filed. In exceptional circumstances, and on a case-by-case basis, the Commissioner will consider requests for financial relief where returns have not been filed. However, the reason for not filing the return (factors G, H and I at paragraph 82) must be taken into consideration when determining whether or not to grant relief.
28. The Commissioner may cancel an instalment arrangement if the taxpayer has provided false or misleading information, or if the taxpayer is not meeting their obligations under the instalment arrangement. When an instalment arrangement is cancelled because the taxpayer provided false or misleading information, monthly incremental penalties will be imposed retrospectively as if the instalment arrangement had not been entered into.

***Process to be followed for financial relief***

29. When a taxpayer feels they are in financial difficulty they can apply for financial relief. This application can be made before or after the due date for payment. It may be beneficial to apply before a due date as that may stop some penalties from applying (discussed in paragraph 25 above). If the taxpayer is applying to have tax written off, they must provide evidence to show why payment of the amount owed would place them in serious hardship (refer to paragraph 20).
30. The request for financial relief can be made verbally (by telephone or face-to-face with an Inland Revenue officer) or in writing. However, in some cases, the Commissioner may require that the application be **made in writing**. **This may be where a taxpayer's** inability to pay the outstanding tax is caused by a number of factors that require evidence in writing or when a taxpayer has related parties, such as a partnership or company, that have outstanding tax to pay. Where a taxpayer is required to put their application in writing, they may do so by post, **through Inland Revenue's myIR Secure Online Services**, email, fax, or delivering written notice in person to an Inland Revenue office.
31. For instalment arrangement requests in respect of outstanding GST, taxpayers can use myIR to **directly request an instalment arrangement through the "GST" tab**. This method of applying enables them to:
  - instantly review the forecasted instalment amounts including a breakdown of interest and penalties; and
  - receive an automatic notification of whether the instalment arrangement is accepted, or has been sent to be reviewed.

These instalment arrangements need to be a minimum of \$50/week, \$100/fortnight or \$200/month, and the debt must be cleared within 3 years. Taxpayers who do not meet this criteria can request an instalment arrangement by the methods in paragraph 30 above.

32. Written applications for write-off will not be required when it is evident from information already available to the Commissioner that recovery would place a taxpayer in serious hardship. This may happen where a taxpayer requests relief by

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way of an instalment arrangement, but the information provided shows that repayment, even by way of an instalment arrangement, would place them in serious hardship. Where this is the case the Commissioner will contact the taxpayer and discuss their situation.

33. After receiving a request for financial relief the Commissioner will consider the **taxpayer's financial position as at the date on which the request is made** (unless the Commissioner seeks further information or makes a counter offer, as discussed in the following paragraph, and receives a response after 20 working days). The Commissioner will review the information provided as part of the application, and may also consider other information that the Department holds. All of the factors A – I in paragraph 82 are potentially relevant and will be considered by the Commissioner when deciding whether recovery of the outstanding amounts would place the taxpayer into serious hardship. As explained in the 2 step test above, an instalment arrangement can only be entered into so long as doing so does not place the taxpayer in serious hardship. If recovery of the amount owing would lead to serious hardship the Commissioner will follow the 2 step test (refer to paragraph 20) to decide whether to write off the amounts owing.
34. When considering an application for financial relief, the Commissioner may take 1 of 4 actions:<sup>9</sup>
- ***Accept the request***  
If the request is accepted, the taxpayer will be advised in writing of:
    - the tax type(s), the relevant period(s) and any amounts of tax written off;
    - details of any instalment arrangement including the repayment amounts and frequency of payments;
    - any remaining net losses and/or excess imputation credits carried forward (see discussion at paragraph 43); and
    - the amount of any penalties or interest.
  - ***Seek further information from the taxpayer***  
To help the Commissioner make a decision on granting relief, a taxpayer may be asked to provide additional information including relevant financial information. If further information is requested, the taxpayer must provide that information within 20 working days (or within any longer period allowed by the Commissioner). Information received outside that timeframe will be treated as a new request for financial relief. Depending on when the original request was made and when the further information is provided this could mean additional late payment penalties are applied (see paragraph 24 above).
  - ***Make a counter-offer***  
The Commissioner may make a counter-offer. This may occur where, for instance, it is considered that the taxpayer can afford to make a lump-sum payment, or an arrangement involving a lump sum payment, a partial write-off and a partial instalment arrangement may be more appropriate. If a counter offer is made, the taxpayer must respond to that offer within 20 working days (or within any longer period allowed by the Commissioner). A response received outside that timeframe will be treated as a new request for financial relief.

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<sup>9</sup> Section 177(3) of the Act.

- **Decline the taxpayer's request**

The Commissioner may **decline the taxpayer's request** for various reasons, including where the Commissioner considers that:

- the taxpayer is able to pay the outstanding tax immediately;
- the taxpayer has not provided sufficient information to support their request;
- **agreeing to the taxpayer's request** would not maximise the recovery of outstanding tax from the taxpayer;
- the request is frivolous or the taxpayer is vexatious;
- for instalment arrangement requests - the taxpayer has not met their obligations under a previous instalment arrangement;
- for instalment arrangement requests - the arrangement being proposed bears little relation to the debt owed.<sup>10</sup>

The taxpayer will be informed of this decision to decline the request.

35. A taxpayer who has entered into an instalment arrangement may at any point in time ask that the arrangement be renegotiated. The Commissioner may only renegotiate instalment arrangements after two years from when the arrangement was entered into. For example, it may be appropriate to renegotiate an arrangement when the taxpayer incurs new debt that they are unable to meet. Any renegotiation will be treated as if it were a new request for financial relief.<sup>11</sup>
36. While there is no legislative time limit for the term of an instalment arrangement, **Inland Revenue's practice is that instalment arrangements are made for as short a period as possible** - generally no more than 2-3 years.
37. Through the term of the instalment arrangement a taxpayer is expected to meet their current tax obligations or make a new application for financial relief if unable to meet those obligations.

### **Reversal of a write-off**

38. The Commissioner may reverse a write off if the tax was originally written off on the basis of false or misleading information provided by the taxpayer.<sup>12</sup>
39. In addition, the Commissioner will reverse a write-off made on the grounds of serious hardship if the taxpayer declares bankruptcy, or is subject to bankruptcy proceedings within a year of the tax being written off. Or, in the case of a relief company, if they are liquidated or are in the course being liquidated within a year of the write-off.
40. If the Commissioner partially writes off some debt and enters into an instalment arrangement for the remainder, the Commissioner cannot reverse the write-off even if, during the term of the instalment arrangement, the taxpayer does not meet the **instalment arrangement's terms**.<sup>13</sup>

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<sup>10</sup> While the Commissioner's duty to collect highest net revenue is paramount, this is to be balanced against the care and management obligations. As was held in the case of *Russell v Commissioner of Inland Revenue* [2015] NZHC 754, to preserve the integrity of the tax system, the Commissioner may refuse to enter into an instalment arrangement with a taxpayer where the arrangement proposed bears little relation to the real debt.

<sup>11</sup> Section 177B(3), (4), (5).

<sup>12</sup> Section 177C(7).

<sup>13</sup> Section 177C(8).

## **Other matters**

### *Writing off a trust's outstanding tax*

41. Trustees of a trust are personally liable for debts of the trust (including tax debts). If there is insufficient trust property to pay a trust debt, a trustee may have to pay the debt out of their own resources. When there is more than one trustee, those trustees **are jointly and severally liable for the trust's tax obligations.**
42. Trustees, in their capacity as natural persons, may experience serious hardship as a **result of having to meet a trust's tax debt from their personal resources.** The Commissioner will consider serious hardship applications from natural person trustees on a case-by-case basis and may write off tax on grounds of serious hardship when no other avenue is available for collection.

### *Tax losses and excess imputation credits*

43. When the Commissioner writes off outstanding tax for a taxpayer (other than a partnership which is discussed in the following paragraph) who has tax losses or imputation credits carried forward from a previous year, consequential adjustments are required to those losses and imputation credits.
  - If the Commissioner writes off outstanding tax for a taxpayer who has net losses, **part or all of the taxpayer's tax losses will also be extinguished. The amount** extinguished is calculated by dividing the amount written off by:
    - 0.33 (if the taxpayer is not a company); or
    - 0.28 (if the taxpayer is a company)and reducing the tax losses by that amount.<sup>14</sup> This reduces any losses that can be carried forward.
  - If the Commissioner writes off outstanding tax for a taxpayer who has imputation credits carried forward from a previous year, all or part of these credits will be extinguished on a dollar-for-dollar basis.<sup>15</sup>
  - When a taxpayer has both tax losses and imputation credits carried forward from a previous year, the net losses will be extinguished first.<sup>16</sup> **A taxpayer's tax losses** and/or imputation credits can be extinguished even if the tax written off is not income tax.
44. When the Commissioner writes off outstanding tax for a partnership who has tax losses, the way losses are extinguished depends on the particular tax type making up the debt and the type of partnership:
  - **General partnership; Income tax:** For income tax, the partnership is treated as transparent, so income is returned and any losses are carried forward by the individual partners. The Commissioner may grant relief to an individual partner by way of a write-off of their income tax debt. If that individual partner has losses, some or all of the losses will be extinguished. The amount extinguished is calculated by dividing the amount written off by 0.33. The tax position of other partners is irrelevant.

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<sup>14</sup> Section 177C(5).

<sup>15</sup> Section 177C(5B).

<sup>16</sup> Section 177C(5C).

- **General partnership; GST:** For GST, the partnership itself is registered for GST, and any debt is payable by the partnership. However, the individual partners are also jointly and severally liable for any GST debt. Therefore, if a partnership cannot meet its GST liability, the debt is payable by the individual partners. If payment of the debt would place one partner in serious hardship, but not the other partners, then those other partners are liable to meet the debt. When the Commissioner decides to write off the GST debt of the partnership any losses of the individual partners will be extinguished. The partners must collectively have their losses extinguished by dividing the amount written off by 0.33. Where only some partners have losses available to extinguish, or where the losses for each individual partner is different, this will require apportionment of the total extinguished losses between the individual partners. This should be done in a way that is fair and reasonable. In the first instance this will mean extinguishing individual losses equally but where a partner has insufficient losses, the losses of other partners will be extinguished up to the maximum.<sup>17</sup>
- **General partnership; PAYE, RWT, NRWT, other tax types:** Losses will be extinguished depending on the liability of the partners.

Where the legal liability to pay the outstanding tax is with the partnership (ie. the partners have no personal liability to pay the tax), none of the partners' losses can be extinguished.

Where the partners are each liable for their proportionate share of the outstanding tax, each partner can have losses extinguished proportional to the amount of outstanding tax that they were liable for.

Where the partners are jointly and severally liable for an amount of outstanding tax, each partner can have losses extinguished up to the total amount of tax written off (provided that the total amount extinguished from all partners does not exceed the total amount of tax written off). Note that PAYE debt is owed by the individual partners on a joint and several basis.

- **Limited partnerships:** Limited partnerships comprise of general partners (responsible for the management of the partnership) and limited partners. General partners are liable for the partnership debt and the principles applied for the extinguishment of losses are the same as described in the bullet points above. Limited partners who take part in the management of the limited partnership are liable, to the same extent as a general partner, if, at the time that the debt was incurred:
  - the limited partner took part in the management of the limited partnership; and
  - Inland Revenue was aware the limited partner took part in the management of the limited partnership; and
  - Inland Revenue believed on reasonable grounds that the limited partner was a general partner.

A limited partner who does not take part in the management of the partnership is not liable for the partnership debt.

45. The Commissioner needs to know the correct value of losses or imputation credits when making the adjustments required after writing off outstanding tax. So a taxpayer

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<sup>17</sup> The maximum is the amount set out in section 177C(5) of the Act, calculated for partnerships as the total amount written off divided by 0.33.

will almost always be required to file all outstanding tax returns before their application for a write-off will be considered.

### **Irrecoverable amount**

46. In addition to the grounds discussed above, the Commissioner may also write off outstanding tax, interest and/or penalties that cannot be recovered.
47. This ground may apply in combination with another ground (for instance, an amount may be irrecoverable because the taxpayer is in serious hardship, or an amount is irrecoverable because the administrative resource needed to recover it is considered high and so would be an inefficient use of those resources). However, it may also apply in isolation. Whether an amount is considered to be irrecoverable is to be determined on a case-by-case basis. Factors A - G in paragraph 82 will be relevant in deciding whether to write off the amount owing.

#### *Voluntary administration*

48. During the voluntary administration process as provided in the Companies Act 1993 the Commissioner may enter into a deed of company arrangement and as a result the Commissioner may receive some payments from the taxpayer. Amounts that are irrecoverable will not be written off under the Tax Administration Act until the company has been released from debts as a result of the process followed under the Companies Act.

#### *No asset procedure*

49. **The "no asset procedure" is a one-off process that provides a fresh start to natural persons.** It is administered by the New Zealand Insolvency and Trustee Service and is available as an alternative to bankruptcy for those people who have insufficient income and no assets left to sell to repay debts from \$1,000 up to \$47,000.
50. Unless the Commissioner has cause to ask the Official Assignee to reject or overturn the no asset procedure, any tax owed by a taxpayer who is subject to the procedure is effectively frozen and the Commissioner cannot take any recovery action.
51. Once a taxpayer has been released from debts covered by a no asset procedure, the Commissioner will then write off the balance of the outstanding tax on the basis that it is irrecoverable.

### **Inefficient use of resources**

52. The Commissioner has limited resources to undertake what can sometimes be a lengthy process to collect outstanding amounts. Consistent with the obligations under sections 6(1) and 6A(3), she will not recover outstanding amounts if the recovery of that outstanding tax, interest or penalties would be an inefficient use of her limited administrative resources.<sup>18</sup> If the Commissioner makes a decision under this ground, the tax will be written off.
53. However, a taxpayer cannot request that outstanding amounts be written off simply because they consider **that collection would be an inefficient use of the Commissioner's resources.** It is for the Commissioner to determine **how Inland Revenue's resources** are allocated. These decisions will be made by Inland Revenue staff with the authorised level of authority. The seniority of position that is required to write off

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<sup>18</sup> Section 176(2)(a).

amounts under this ground is an internal process and will depend on the amount being written off.

54. When making a decision whether to write off outstanding amounts under this ground, the Commissioner must take into account factors A – E, H and I in paragraph 82.
55. In considering this ground for writing off tax there will be some instances where the Commissioner will pursue amounts owing even though the cost of collection may be higher than the outstanding tax. In these cases recovery action may still be considered **appropriate if it is consistent with the Commissioner's obligations under sections 6 and 6A**, including protecting the integrity of the tax system, promoting compliance and collecting over time the highest net revenue.<sup>19</sup>

### **Bankruptcy, liquidation or the distribution of an estate**

56. The Commissioner must write off amounts that cannot be recovered because of bankruptcy or liquidation.<sup>20</sup> When a taxpayer is adjudicated bankrupt they will be issued with a new IRD number. The Commissioner will write off outstanding tax<sup>21</sup> **under the bankrupt's previous IRD number** upon receiving advice from the Official Assignee that a dividend is unlikely or a final report or notice that the taxpayer is discharged from bankruptcy.
57. Similarly, when a company is liquidated the Commissioner will write off outstanding tax that cannot be recovered upon receiving a final report or advice from the liquidator that there will be no dividend to Inland Revenue.
58. When an estate has been distributed, the Commissioner must write off any outstanding tax that cannot be recovered upon receiving confirmation from the administrator that the estate has been properly distributed.<sup>22</sup>
59. The Commissioner may only reinstate tax that has been written off if:
  - by operation of law, additional funds are received in respect of a taxpayer after that taxpayer has become bankrupt or has been liquidated; or
  - **additional funds due to a taxpayer's estate are discovered after that taxpayer's estate has been distributed.**<sup>23</sup>
60. This is the case notwithstanding section 177C(3) (discussed above at paragraph 20). Where a taxpayer had been liable to pay a shortfall penalty for evasion or an abusive tax position and the taxpayer is now liquidated or bankrupt, despite section 177C(3), the amount owing will be written off under section 177C(2).
61. If an instalment arrangement has been entered into and the taxpayer then becomes bankrupt or liquidated, the outstanding amount under the instalment arrangement must be included in Inland Revenue's proof of debt to the Official Assignee.<sup>24</sup>

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<sup>19</sup> Russell v Commissioner of Inland Revenue [2015] NZHC 754.

<sup>20</sup> Section 177C(2).

<sup>21</sup> With the exception of child support amounts owing.

<sup>22</sup> Section 177C(2).

<sup>23</sup> Section 177C(4).

<sup>24</sup> Section 177CA.



## **Small amounts of refunds or tax payable**

62. The Commissioner may permanently write off outstanding tax when the balance of the tax payable is \$20 or less.<sup>25</sup>
63. **If it is established later that a taxpayer's assessment or interest calculation was wrong, the Commissioner must amend the taxpayer's account to show the correct tax payable.** Any earlier write-off made may also be adjusted to the correct amount of tax payable.
64. Factors C - F in paragraph 82 will be relevant in deciding whether to write off the amount owing.

## **Remission**

65. The purposes of the penalty provisions in the Act are:<sup>26</sup>
  - to encourage taxpayers to comply voluntarily with their tax obligations and to cooperate with the department; and
  - to ensure that penalties for breaches of tax obligations are imposed impartially and consistently; and
  - to sanction non-compliance with tax obligations effectively and at a level that is proportionate to the seriousness of the breach.

And the purposes of charging taxpayers interest are to:<sup>27</sup>

- compensate the Commissioner for the loss of use of money; and
  - to encourage taxpayers to pay the correct amount of tax on time.
66. However, Inland Revenue recognises that charging interest or penalising a taxpayer for an unintended non-compliant action may be counterproductive and may actually reduce voluntary compliance. So in certain situations the Commissioner may remit interest and/or penalties.
  67. It is important to treat taxpayers requesting a remission of penalties and interest fairly and consistently when compared to those in a similar tax position. For example, while **allowing a penalty to remain could affect that taxpayer's future compliance, a lenient remission practice** may also mean that compliant taxpayers, who have met their obligations on time, may be less likely to do so in the future.
  68. The following sections discuss three circumstances where penalties and/or interest may be remitted.

### ***Event/circumstance beyond the taxpayer's control***

69. Where a taxpayer has not complied with a tax obligation and as a result has been charged a penalty, the Commissioner may, in certain cases, remit that penalty. Section 183A allows the Commissioner to remit these penalties for "reasonable causes" explained in paragraph 71 below.

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<sup>25</sup> Section 174AA.

<sup>26</sup> Section 139.

<sup>27</sup> Section 120A.

70. A taxpayer can request, under this section, for the following penalties to be remitted:
- a late filing penalty;
  - a non-electronic filing penalty;
  - initial and incremental late payment penalties;
  - imputation penalty tax;
  - **Māori authority distribution** penalty tax;
  - a shortfall penalty imposed by section 141AA for failing to make a deduction from a payment to a non-resident contractor;
  - a civil penalty imposed by section 215 of the KiwiSaver Act 2006 for employers who fail to provide information; or
  - a penalty for not paying an employer monthly schedule amount imposed by section 141ED.

(Section 183A does not apply to interest. Nor does it apply to shortfall penalties, other than those imposed by sections 141AA and 141ED).

71. Before the Commissioner can remit a penalty under this section, she must be satisfied of 3 factors:

- ***The penalty arose as the result of an event or a circumstance beyond the taxpayer's control***

**The Act provides that an "event or circumstance" may include** an accident, disaster, illness, or emotional or mental distress. However, the Commissioner also has the discretion to consider other circumstances that are not specifically included in the legislation.

**An "event or circumstance" does not include a taxpayer's financial position.** Requests for financial relief are dealt with under sections 176 and 177. See paragraphs 16 - 37 for more information.

Penalties cannot be remitted under this ground if they arose as a result of an event or circumstance that is caused by an act or omission by an agent of the taxpayer. However, remission can be considered if the act or omission was caused by an event or circumstance that was beyond the control of the agent, could not have been anticipated, and the effect could not reasonably have been avoided. The **term "agent" is not defined in the Act. For practical purposes, the Commissioner** considers an agent is someone who has been given due authority by the taxpayer to act on their behalf in relation to their general, or specific, tax matters. It could include tax agents, intermediaries or other nominated persons.

**The Commissioner will also consider whether the agent's default could have been** avoided by compliance with accepted standards of business organisation and professional conduct.

- ***There is reasonable justification for the breach of the relevant tax laws***

The Commissioner will look at the reason that the taxpayer did not meet their obligations. Whether there is a reasonable justification will be determined objectively. Before an event or circumstance can be considered to provide a taxpayer with reasonable justification for failing to meet their obligations:

- the event or circumstance relied on by the taxpayer must be identified;

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- it must be determined whether the event or circumstance was beyond the control of the taxpayer; and
- consideration must be given to whether the event or circumstance provided the taxpayer with reasonable justification.

- ***The taxpayer corrected the failure to comply as soon as practicable***

The taxpayer must have filed the relevant return and paid any outstanding core tax as soon as it was feasible or realistic after the event or circumstance that caused the breach.

72. In deciding whether remission is appropriate, the Commissioner will consider the factors above along with any other information that the Commissioner considers relevant in assessing the application. The Commissioner may request supporting information if necessary.

### ***Declared emergency event***

73. Section 183ABA allows the Commissioner to remit interest charged when an emergency event physically prevents a taxpayer from making a tax payment.
74. Before the Commissioner can remit interest under this section, she must be satisfied of the following requirements:

- ***An emergency event has occurred***

Section 183ABA applies only in the circumstances of an emergency event. An **emergency event is an event that meets the definition of "emergency" in section 4 of the Civil Defence Emergency Management Act 2002 and is declared to be an emergency event by Order in Council for the purposes of section 183ABA.**<sup>28</sup>

An emergency event can be natural or otherwise and can include an earthquake, tsunami, technological failure, riot or a warlike act.

- ***The emergency event physically prevented a taxpayer from making a tax payment***

Taxpayers had been unable to comply with their tax obligations due to the emergency event significantly affecting them in the following ways:

- they were unable to access their records, for example, through evacuation or destruction of a home or business; or
- they were unable to make payments because they were physically prevented from doing so, for example, extensive infrastructure damage that prevented any local movements, disruption of postal deliveries or damage to phone lines.

- ***The taxpayer made the payment of tax and applied for remission of interest as soon as practicable***

A taxpayer who is seeking remission must have paid the tax and applied for the remission as soon as practicable (that is, as soon as it is feasible or realistic) after the event. This will depend on the circumstances of each case.

- ***The taxpayer is a member of the specified class of persons***

The Order in Council that declares the emergency event will have set out a class of people to whom remission is available.

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<sup>28</sup> Orders in Council are legislative instruments and can be found on the Inland Revenue website ([www.ird.govt.nz](http://www.ird.govt.nz)) or the Parliamentary Counsel Office website ([www.legislation.govt.nz](http://www.legislation.govt.nz)).

- ***The Order in Council is valid; it has not expired or been revoked***  
Amounts may be remitted up until the expiry date set out in the Order in Council.
- ***The Commissioner is satisfied that the effect on the taxpayer of the occurrence of the emergency event makes the remission equitable***  
Relief may be granted under section 183ABA if the effect of the emergency event on the taxpayer's **personal situation** means that it is fair that the interest be remitted.

75. The taxpayer must also provide supporting information if requested by the Commissioner.

***Remission consistent with collection of the highest net revenue over time***

76. Section 183D allows the Commissioner to remit interest and/or penalties if it is **consistent with the Commissioner's duty to collect the highest net revenue over time**.

77. Under this provision the Commissioner may remit:

- a late filing penalty;
- a non-electronic filing penalty;
- initial and incremental late payment penalties;
- a shortfall penalty imposed by section 141AA for failing to make a deduction from a payment to a non-resident contractor;
- a civil penalty imposed by section 215 of the Kiwisaver Act 2006 for employers who fail to provide information;
- a penalty for not paying an employer monthly schedule amount imposed by section 141ED; and/or
- interest under part 7.

(Section 183D does not apply to shortfall penalties other than those imposed by sections 141AA and 141ED)

78. Before the Commissioner can remit a penalty or interest under this section, she must consider:

- ***Whether remitting the interest and/or penalties is consistent with the Commissioner's duty to collect over time the highest net revenue that is practicable within the law***

The Commissioner must consider whether, and the extent to which, remitting penalties and/or interest can promote compliance, especially voluntary compliance, and thereby result in a higher collection of revenue over time.

- ***How the imposition of penalties and interest is used in promoting compliance, especially voluntary compliance***

As noted in paragraph 65 above, encouraging voluntary compliance is one of the key purposes of the penalty rules. The Commissioner recognises that pursuing the collection of penalties in some circumstances will not be consistent with those aims, for example, when a penalty may have been imposed due to:

- a genuine error; or
- a one-off situation.

Each application for remission will be considered on the merits of the case.

Interest will only be remitted in limited circumstances. The test of whether or not interest should be remitted focuses on whether charging the particular taxpayer

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interest is inconsistent with promoting compliance of all taxpayers. In making this decision, the Commissioner will be mindful of the purpose of charging interest. That is, to compensate the Commissioner for the loss of use of the money and also to encourage taxpayers to pay the correct amount of tax on time.

79. When considering remission under section 183D, the taxpayer's financial situation cannot be taken into account.<sup>29</sup> This means **the taxpayer's** ability (or inability) to pay the tax owing is not a factor when deciding whether to grant remission.
80. In deciding whether remission is appropriate, the Commissioner will consider the following factors:
- Why did the taxpayer pay or file late, or not file electronically?
  - Whether the non-compliant action was the result of a genuine oversight or a one-off situation:
    - Requests for remission because of a genuine oversight or a one-off situation apply to penalties only. Inland Revenue will not remit interest in these cases as it is compensation to the Commissioner for the loss of the use of the money over time.
    - If interest is charged because of an error or default by a third party, the Commissioner considers the taxpayer should look to that third party for compensation.
  - Was there an error in an Inland Revenue publication that has resulted in the taxpayer incurring the penalty or interest? If the taxpayer relies on incorrect information contained in an Inland Revenue publication, it may be unreasonable for the Commissioner to impose a penalty or charge interest.
  - Any other information that Inland Revenue considers relevant in assessing the application. In particular, how will the remission contribute to the collection of the highest net revenue over time and otherwise promote voluntary compliance by all taxpayers?
81. The Commissioner may request supporting information if necessary.

### **Factors for the Commissioner to consider**

82. In deciding whether to grant relief, the Commissioner will consider whether the legislative criteria for each form of relief are met, as covered in the earlier sections of this Statement. Of particular importance is the obligation on the Commissioner to maximise the recovery of outstanding amounts.<sup>30</sup> In addition, the Commissioner may take into account other, more general, factors. These are explained below. They are not listed in order of importance and the factors that apply and the weighting that they are given will depend on the particular case. The table at paragraph 11 summarises which factors are relevant for the various grounds for relief.

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<sup>29</sup> Section 183D(3) of the Act.

<sup>30</sup> Section 176 of the Act.

## **A. Taxpayer's financial position**

The Commissioner may **consider the taxpayer's ability to pay the outstanding** amount, either immediately or in the future. This may, depending on the circumstances, include consideration of:

- income and expenses (including income and expenditure for relationship property, family and spousal income where appropriate);
- assets and liabilities including asset valuations;
- a 12-month projection of cash-flow (including whether they are due to receive any sums of money in the near future (for instance, from the sale of a property, or from an inheritance));
- a statement of financial performance (a profit and loss statement);
- a statement of financial position (a balance sheet);
- a list of debtors and creditors, including how much is owed to or by the taxpayer; and
- any vested interest held in another entity (such as a trust).

A comparison of the taxpayer's financial position will be made to Statistics New Zealand's **Household expenditure survey** which sets out average expenses. This comparison is simply a starting point, and the Commissioner will consider other expenditure that is **incurred due to the taxpayer's personal circumstances**.

The **taxpayer's financial position cannot** be taken into account when considering whether to grant relief under sections 183A or 183D.

## **B. Options available to the Commissioner**

The Commissioner has a duty to maximise the recovery of outstanding tax from a taxpayer and so is obliged to compare the value of the likely recovery from **accepting a taxpayer's proposal to other viable options for recovery**. The options available are:

- collection of the amount owing in full;
- entering into an instalment arrangement;
- writing off amounts;
- remitting amounts;
- applying to have the taxpayer made bankrupt or liquidated. These options are administered by the Insolvency and Trustee service, and may result in some payment being made to Inland Revenue.

In some cases, it is clear which option will maximise recovery. In other cases, there may be options that could yield similar returns. Accordingly, it is necessary to determine which option, or combination of options, will maximise recovery.

## **C. Integrity of the tax system**

One of the core obligations imposed under the Act requires Inland Revenue officers to use their best endeavours to protect the integrity of the tax system.<sup>31</sup>

The "integrity of the tax system" is defined in section 6 of the Act. Three points of particular relevance are discussed below:

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<sup>31</sup> Section 6 of the Act.

- ***Taxpayers' perception of integrity*** – the Commissioner must ensure that granting relief to some taxpayers is not viewed as unjust by others in the taxpaying community. This requires the Commissioner to act legally and to provide consistent treatment.

The Commissioner will be mindful of the taxpayer's expenditure, in particular spending on unnecessary goods or services. Taxpayers requesting that relief be granted should not be allowed to maintain lifestyles with high amounts of discretionary spending when either the spending is unnecessary or there are reasonable alternatives available involving lower expenditure. For example, it is unlikely that the Commissioner would agree to writing off outstanding tax while the taxpayer continues to pay private school fees.

- ***The responsibilities of taxpayers to comply with the law*** – Where there has been a deliberate failure by a taxpayer to comply with their tax obligations and where recovery is uncertain or is likely to result only in a relatively minor proportion of the overall outstanding tax being recovered, the Commissioner may initiate enforcement proceedings to secure the wider interests identified by the legislation.
- ***The responsibilities of those administering the law to do so fairly, impartially, and according to law*** – Tax obligations are imposed under the law and are intended to apply to all relevant taxpayers. Taxpayers should be treated consistently.

Where a **taxpayer's offer** for payment of all or part of the outstanding amounts (such as an instalment arrangement) would yield more than bankruptcy or liquidation action, the Commissioner is likely to consider this favourably. However, before making a decision to accept the offer, the Commissioner will weigh this up against the other factors. Any amount not recoverable under the agreement will be written off at the time the agreement is entered into.

#### ***D. Resources available to the Commissioner***

When making any decision the Commissioner must consider the resources required to carry out that action and the resources that are available. The Commissioner must then make a decision of whether the use of resources is justified and in making this decision the relative importance of other factors will be considered.

#### ***E. Importance of promoting compliance***

This factor is one of the Commissioner's care and management considerations, and comprises a range of considerations. Voluntary compliance underpins tax administration.

#### ***F. Taxpayer's reasons for failure to pay***

The Commissioner will consider the circumstances leading to the taxpayer having outstanding amounts, the causes of those circumstances and to what extent the taxpayer contributed to, or failed to mitigate, those circumstances.

#### ***G. Taxpayer's compliance history***

The Commissioner will consider a taxpayer's whole history of compliance. In particular, the Commissioner will consider the taxpayer's history with regards to filing tax returns and payments of tax. The outcomes of previous relief granted

(such as whether the taxpayer met their obligations under previous instalment arrangements, or whether the taxpayer changed their actions to prevent recurrent financial hardship) will also be considered.

#### **H. The taxpayer's co-operation**

The Commissioner will consider the nature and extent of the taxpayer's co-operation and negotiating stance; and the speed with which the taxpayer provided requested information as well as the quality of that information.

Taxpayers who are co-operative and forthcoming with information save Inland Revenue time and resource in verifying information, allow constructive discussions to take place, and allow the tax system to be administered more efficiently. In comparison, taxpayers who are frivolous and/or vexatious result in Inland Revenue investing more resource than is reasonable.

#### **I. Steps taken to avoid similar situation in future**

The Commissioner will consider whether any steps have been, or will be, taken by the taxpayer to prevent the situation from recurring in the future. This may involve improved budgeting, selling assets, adjusting lifestyle factors, or any other relevant steps taken.

### **Reviewing a decision of the Commissioner**

Section 138E(1)(e)(iv) provides that there is no statutory right of challenge where the Commissioner has made a decision to grant relief, decline to grant relief, or to cancel relief under sections 176, 177, 177A, 177B, 177C, 183A and 183D.

However, if a taxpayer is concerned that their circumstances have not been given proper consideration they should raise their concern with the Inland Revenue officer they have been dealing with and ask for the decision to be reconsidered. If a taxpayer is still not satisfied, they also have the option to have a decision reviewed by the Office of the Ombudsman or a judicial review. It is strongly recommended that independent legal advice be obtained.

If a taxpayer is not satisfied with the level of service they have received from Inland Revenue, they can find more information about the Inland Revenue Complaints Management Service at <http://www.ird.govt.nz/how-to/complaints-and-disputes/complaints-process/> or phone 0800 274 138 (Monday to Friday between 8am and 5pm).

This Standard Practice Statement is signed on 22 August 2018.



**Rob Wells**  
**Manager – Technical Standards**

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## **APPENDIX: Relevant provisions of legislation**

### **TAX ADMINISTRATION ACT 1994**

The following sections of the Tax Administration Act 1994 are particularly relevant to the relief provisions. For the most recent version of the Act, and any other provisions, see [www.legislation.govt.nz](http://www.legislation.govt.nz)

#### **Section 176 Recovery of tax by Commissioner**

- (1) The Commissioner must maximise the recovery of outstanding tax from a taxpayer.
- (2) Despite subsection (1), the Commissioner may not recover outstanding tax to the extent that—
  - (a) recovery is an inefficient use of the **Commissioner's resources**; or
  - (b) recovery would place a taxpayer, being a natural person, in serious hardship.
- (3) Despite subsection (2)(b), the Commissioner may take steps preparatory to, or necessary to, bankrupt the taxpayer, including debt proceedings in the District Court or the High Court.

#### **Section 177 Taxpayer may request financial relief**

- (1) **A taxpayer, or a person on a taxpayer's behalf**, requests financial relief by either—
  - (a) making a claim stating why recovery of **the taxpayer's** outstanding tax or a **relief company's outstanding tax** would place the taxpayer, being a natural person, in serious hardship; or
  - (b) requesting to enter into an instalment arrangement with the Commissioner.
- (1B) **For the purposes of this section, the Commissioner must consider the taxpayer's** financial position at the date on which the request for financial relief is made.
- (2) **The Commissioner may require a taxpayer, or a person on a taxpayer's behalf**, to request financial relief under subsection (1)(a) by notice.
- (3) Upon receiving a request, the Commissioner may—
  - (a) **accept the taxpayer's request**; or
  - (b) seek further information from the taxpayer; or
  - (c) make a counter offer; or
  - (d) **decline the taxpayer's request**.
- (4) A taxpayer has 20 working days, or a longer period allowed by the Commissioner, to provide the information sought or to respond to a counter offer.
- (5) If the Commissioner receives information or a response from a taxpayer outside the time period allowed under subsect

## **Section 177A How to apply serious hardship provisions**

- (1) Subsections (2), (3) and (4) provide the rules for the Commissioner to decide (the decision) whether, -
- (a) for the purposes of section 176, recovery of outstanding tax would place a taxpayer, being a natural person, in serious hardship:
  - (b) for the purposes of section 177, **the Commissioner may accept the taxpayer's request for financial relief on the basis of a claim that recovery of the taxpayer's outstanding tax or a relief company's outstanding tax would place the taxpayer, being a natural person, in serious hardship:**
  - (c) for the purposes of section 177B, an instalment arrangement entered into by a taxpayer or a relief company would place the taxpayer, being a natural person, in serious hardship:
  - (d) for the purposes of section 177C, recovery of the outstanding tax would place the taxpayer, being a natural person, in serious hardship.
- (2) The Commissioner makes a decision under this section by determining whether financial information, after allowing for payment of a relevant amount of outstanding tax, and subject to subsections (3) and (4), shows that the taxpayer would, after the request under section 177 (the **request**), likely have significant financial difficulties because, after the request, —
- (a) the taxpayer or their dependant has a serious illness:
  - (b) the taxpayer would likely be unable to meet—
    - (i) minimum living expenses estimated according to normal community standards of cost and quality:
    - (ii) the cost of medical treatment for an illness or injury of the taxpayer, or of their dependant:
    - (iii) the cost of education for their dependant:
  - (c) other factors that the Commissioner thinks relevant would likely arise.
- (3) Compliance with, and non-compliance with, tax obligations must not be considered by the Commissioner when making a decision under this section.
- (4) The Commissioner must use only financial information that the Commissioner has at the date on which the decision is made.

## **Section 177B Instalment arrangements**

- (1) The Commissioner must not enter into an instalment arrangement with a taxpayer or a relief company to the extent that the arrangement would place the taxpayer, being a natural person, in serious hardship.
- (2) The Commissioner may decline to enter into an instalment arrangement if—
- (a) to do so would not maximise the recovery of outstanding tax from the taxpayer; or
  - (b) the Commissioner considers that the taxpayer is in a position to pay all of the outstanding tax immediately; or
  - (c) the taxpayer is being frivolous or vexatious; or
  - (d) the taxpayer has not met their obligations under a previous instalment arrangement.
- (3) A taxpayer may renegotiate an instalment arrangement at any time.
- (4) The Commissioner may renegotiate an instalment arrangement at any time after the end of 2 years from the date on which the instalment arrangement was entered.

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(5) The renegotiation of an instalment arrangement is treated as if it were a new request for financial relief.

(6) The Commissioner may cancel an instalment arrangement if—

(a) it was entered into on the basis of false or misleading information provided by the taxpayer; or

(b) the taxpayer is not meeting their obligations under the arrangement.

(7) Despite sections LA 6(2) and LH 2(6) of the Income Tax Act 2007, a taxpayer with an instalment arrangement who is meeting their obligations under it may choose to have an amount of refundable tax credit remaining for a tax year paid to them rather than used under the ordering rules set out in those sections.

### **Section 177C Write-off of tax by Commissioner**

(1) The Commissioner may write off outstanding tax that cannot be recovered.

(1BA) The Commissioner may use, as a ground for deciding whether or not to write off the outstanding tax of a taxpayer or of a relief company, the basis that recovery of the outstanding tax would place the taxpayer, being a natural person, in serious hardship. The Commissioner is not required to write off the outstanding tax if the ground exists.

(1B) The Commissioner may write off an amount of outstanding tax to the extent to which the amount—

(a) is outstanding from the 2008–09 tax year; and

(b) is tax payable under section MF 5(2) or MF 6(2) of the Income Tax Act 2007, or is otherwise the result of WFF tax credit overpayment or overcrediting; and

(c) is outstanding due to amendments to the family scheme made by the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008.

(1C) The Commissioner must write off an amount, not exceeding \$100, of outstanding tax to the extent to which the amount—

(a) is outstanding from the 2008–09 tax year; and

(b) is tax payable under section MF 5(2) or MF 6(2) of the Income Tax Act 2007, or is otherwise the result of WFF tax credit overpayment or overcrediting.

(1D) The Commissioner must write off an amount, not exceeding \$30, of outstanding tax to the extent to which the amount—

(a) is outstanding from the 2010–11 tax year; and

(b) is tax payable under section MF 5(2) or MF 6(2) of the Income Tax Act 2007, or is otherwise the result of WFF tax credit overpayment or overcrediting.

(2) The Commissioner must write off outstanding tax that cannot be recovered in the following situations:

(a) bankruptcy;

(b) liquidation;

(c) **a taxpayer's estate has been distributed.**

(3) Despite subsection (1), the Commissioner must not write off outstanding tax (inclusive of any shortfall penalties), if a taxpayer is liable to pay, in relation to the outstanding tax, a shortfall penalty for an abusive tax position or evasion or a similar act.

(4) Despite subsection (2), the Commissioner may reinstate all or part of the outstanding tax written off if the Commissioner receives, by operation of law, additional funds in respect of a taxpayer after the taxpayer becomes bankrupt, is liquidated or if additional **funds due to the taxpayer's estate are discovered after the taxpayer's estate has been distributed.**

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(5) If the Commissioner writes off outstanding tax for a taxpayer who has a tax loss, the **Commissioner must extinguish all or part of the taxpayer's tax loss, by—**

- (a) dividing the amount written off by 0.33 and reducing the tax loss by that amount, if the taxpayer is not a company; or
- (b) dividing the amount written off by 0.28 and reducing the tax loss by that amount, if the taxpayer is a company.

(5B) If the Commissioner writes off outstanding tax for a taxpayer who has a tax credit carried forward under section LE 3 of the Income Tax Act 2007, the Commissioner must extinguish an amount of the tax credit on a one-for-one basis.

(5C) If a taxpayer has both a tax loss to which subsection (5) applies and a tax credit to which subsection (5B) applies, the Commissioner must extinguish the tax loss before extinguishing the tax credit.

(6) For the purpose of subsection (5), the tax loss that may be extinguished is the tax loss of the taxpayer at the time at which the outstanding tax is written off and the Commissioner may use a figure for that tax loss based on the most recent return of income furnished by the taxpayer.

(7) The Commissioner may reverse a write-off if—

- (a) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off is a natural person who—
  - (i) declares bankruptcy within a year of the outstanding tax being written off; or
  - (ii) is subject to bankruptcy proceedings brought by a creditor within a year of the outstanding tax being written off; or
- (b) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off is a relief company which, within a year of the outstanding tax being written off, is, or is in the course of being, liquidated; or
- (c) the outstanding tax was written off due to false or misleading information provided by the taxpayer.

(8) If the Commissioner enters into an instalment arrangement that provides for some outstanding tax to be written off, the Commissioner may not reverse the write-off even if, during the term of the instalment arrangement, the taxpayer does not meet the **instalment arrangement's terms**.

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

(1) This section applies to—

- (a) a late filing penalty;
- (b) a non-electronic filing penalty;
- (c) a late payment penalty;
- (d) imputation penalty tax imposed by section 140B;
- (e) [Repealed]
- (f) Maori authority distribution penalty tax imposed by section 140CB;
- (g) a shortfall penalty imposed by section 141AA;
- (h) a civil penalty imposed under section 215 of the KiwiSaver Act 2006;
- (i) a penalty for not paying employer monthly schedule amount imposed by section 141ED.

(1A) The Commissioner may remit the penalty if the Commissioner is satisfied that—

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- (a) a penalty to which this section applies arises as a result of an event or circumstance beyond the control of a taxpayer; and
- (b) as a consequence of that event or circumstance the taxpayer has a reasonable justification or excuse for not furnishing the tax return or an employer monthly schedule, or not furnishing an employer monthly schedule in a prescribed electronic format, or not paying the tax on time; and
- (c) the taxpayer corrected the failure to comply as soon as practicable.

**(2) Without limiting the Commissioner’s discretion under subsection (1), an event or circumstance may include—**

- (a) an accident or a disaster; or
- (b) illness or emotional or mental distress.

**(3) An event or circumstance does not include—**

- (a) an act or omission of an agent of a taxpayer, unless the Commissioner is satisfied that the act or omission was caused by an event or circumstance beyond the control of the agent—
  - (i) that could not have been anticipated; and
  - (ii) the effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or
- (b) **a taxpayer’s financial position.**

**Section 183ABA Remission in circumstances of emergency event**

(1) This section applies for a taxpayer if—

- (a) an emergency event, declared in an Order in Council under this section, physically prevents the taxpayer from making a payment required by a tax law on or before the due date for the payment; and
- (b) the taxpayer is charged with interest under Part 7 for failing to make the payment by the due date; and
- (c) the taxpayer is a member of a class of persons to whom a remission under this section is available, if such a class of persons is described in the Order in Council declaring the emergency event.

(2) The taxpayer may ask the Commissioner to remit the interest.

(3) The Commissioner may remit the interest if the Commissioner is satisfied that—

- (a) it is equitable that the interest be remitted; and
- (b) the taxpayer asked for the relief as soon as practicable; and
- (c) the taxpayer made the payment as soon as practicable.

(4) The Governor-General may from time to time by Order in Council—

- (a) declare an event that meets the requirements of paragraphs (a) and (b) of the definition of emergency in section 4 of the Civil Defence Emergency Management Act 2002, to be an emergency event;
- (b) describe a class or classes of persons to whom a remission under this section is available in relation to the emergency event.

(5) An Order in Council (the **order**) made under subsection (4) or this subsection—

- (a) may relate to an event that occurred after the commencement of this Act and before the commencement of the order;
- (b) expires, if not renewed under paragraph (c), after—
  - (i) the period given in the order, if such a period is given; or
  - (ii) if no such period is given, 6 months from the promulgation of the order:

- (c) may be renewed or replaced from time to time by an Order in Council made before or after the date on which the order would otherwise expire.

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

- (1) The Commissioner may remit—
  - (a) a late filing penalty; and
  - (aa) a non-electronic filing penalty; and
  - (b) a late payment penalty; and
  - (bb) a shortfall penalty imposed by section 141AA; and
  - (bc) a civil penalty imposed under section 215 of the KiwiSaver Act 2006; and
  - (bd) a penalty for not paying employer monthly schedule amount imposed by section 141ED; and
  - (c) interest under Part 7—
    - payable by a taxpayer if the Commissioner is satisfied that the remission is **consistent with the Commissioner’s duty to collect over time the highest net revenue that is practicable within the law.**
- (2) In the application of this section, the Commissioner must have regard to the importance of the penalty, and interest under Part 7, in promoting compliance, especially voluntary compliance, by all taxpayers and other persons with the Inland Revenue Acts.
- (3) **The Commissioner must not consider a taxpayer’s financial position when applying this section.**

**Section 3 – Legislative definitions - Selected relevant definitions are below:**

**Commissioner’s official opinion—**

- (a) means, for a taxpayer, —
  - (i) an opinion of the Commissioner concerning the tax affairs of the taxpayer communicated by the Commissioner after all information relevant to forming the opinion has been provided to the Commissioner, if that information is correct;
  - (ii) a finalised official statement of the Commissioner notifying the taxpayer, if **it specifically applies to the taxpayer’s situation:**
- (b) does not include a private binding ruling

**Relief company** means, in relation to a taxpayer, a company in which—

- (a) the taxpayer owns 50% or more of the shares;
- (b) the taxpayer and 1 other person jointly own 50% or more of the shares;
- (c) the taxpayer is a shareholder-employee, and the company satisfies paragraphs (a) and (c) of the definition of **close company** in section YA 1 of the Income Tax Act 2007.

## **OTHER RELEVANT LEGISLATIVE PROVISIONS**

In the Tax Administration Act 1994 :

- Section 15B(c)
- Section 120A
- Section 120W
- Section 139B
- Section 139BA
- Section 141AA
- Section 141D
- Section 141E
- Section 141ED
- Section 142A
- Section 174AA

Civil Defence Emergency Management Act 2002 - Section 4 - **Definition of "emergency"**.

Companies Act 1993 – voluntary administration provisions.

Kiwisaver Act 2006 – section 215

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