

Standard practice statement

SPS 19/04

Late Filing Penalties

This statement also appears in the *Tax Information Bulletin* Vol 31, No 6 (July 2019).

Introduction

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

This Statement sets out the Commissioner's practice for imposing late filing penalties under section 139A and 139AAA of the Tax Administration Act 1994 (TAA).

The New Zealand tax system is based on voluntary compliance. It relies on taxpayers voluntarily meeting the Inland Revenue obligations under the tax laws, for example, by filing tax returns by the due date. Sections 139A and 139AAA impose a penalty on a taxpayer for not filing certain returns by the due date. The purpose of the penalty is to promote voluntary compliance and to ensure penalties for breaches are imposed impartially and consistently. The penalties also cover costs related to following up outstanding returns.

Note that this statement only discusses penalties in respect of late filed returns. It is not intended to cover penalties for late payments of tax. The legislation covering each of these penalties types is different.

All section references set out in this statement are to the Tax Administration Act 1994. Sections 139A and 139AAA are set out in the appendix to this statement.

Application

This Statement applies from 30/05/2019 and replaces Standard Practice Statement 12/02 *Late filing penalty*, published in *Tax Information Bulletin* Volume 24, No 5 (June 2012).

Standard practice

Summary

1. Under section 139A and 139AAA, a late filing penalty applies to:
 - annual tax returns;
 - annual ICA returns required to be filed under section 69(1) and (2)(a) by an Australian ICA company that is not required to file a return of income;
 - ACC reconciliation statements;
 - a multi-rate PIE return required under section 57B;
 - a Resident Land Withholding Tax (RLWT) statement required under section 54B;
 - employment income information;
 - GST returns (section 139AAA).
2. Except in the case of a late filing penalty for employment income information or GST returns, the Commissioner must give at least 30 days' notice to the taxpayer of the intention to impose a late filing penalty. The Commissioner must provide such a notice either in writing or by public notification to a taxpayer or group of taxpayers. If the outstanding return is filed within the 30-day period, or an extension of time is granted to file the outstanding return, the penalty will not be imposed.
3. For employment income information and GST returns, the Commissioner must notify the taxpayer that the late filing penalty is payable when a taxpayer fails to file the information or GST return on time. If the taxpayer files that same type of return (GST or employment income information) late in the succeeding 12 months, a late filing penalty will automatically be applied.
4. The amount of the late filing penalty for annual tax returns is based on the amount of net income. If the net income is:

• below \$100,000, the penalty is	\$50
• between \$100,000 to \$1,000,000	\$250
• above \$1,000,000	\$500
5. The amount of the late filing penalty for employment income information and an annual ICA return required to be filed by an Australian ICA company is \$250. The amount of late filing penalty for multi-rate PIE returns and RLWT statements is also \$250.
6. The amount of the late filing penalty for a GST return is:
 - \$250 for registered persons who account for GST using the invoice or hybrid basis;

- \$50 for registered persons who account for GST using the payments basis.

Detailed discussion

Imposing the late filing penalty

7. The Commissioner's practice is that a late filing penalty may be imposed on the following:
 - income tax returns for individuals and companies (IR3 & IR4)
 - annual ICA returns required to be filed under section 69(1) and 69(2)(a) by an Australian ICA company that is not required to file a return of income for an income year that corresponds to an imputation year (IR4J)
 - multi-rate PIE returns
 - RLWT statements
 - employment income information; and
 - GST returns.
8. A late filing penalty will be imposed in the following circumstances.

Income Tax returns

9. A late filing penalty will be imposed in respect of an outstanding IR3 or IR4 income tax return in the following circumstances:
 - the return is not filed by the due date, and is not subject to an extension of time arrangement; or
 - the return is subject to an extension of time arrangement, and is not filed by the date agreed to in that arrangement; or
 - an extension of time arrangement is withdrawn from a tax agent, and the return(s) are not filed by the date specified when the extension of time was withdrawn; or
 - the return is for a client of a tax agent with an extension of time arrangement and is not filed by the 31st of March in the year immediately following the income year to which the return applies.
10. Before imposing a late filing penalty, the Commissioner will provide written notification of at least 30 days, either by public notification or directly to the taxpayer.
11. The amount of the penalty for outstanding income tax returns is initially based on the minimum penalty of \$50. Once the return is received the amount of the penalty is checked and if the net income is in a different bracket to that minimum amount, the penalty is amended. The minimum penalty remains payable if the return is subsequently filed and shows a loss.

12. The due date for payment of a late filing penalty is the later of a date specified by the Commissioner, not being less than 30 days after the date of the notice informing of the imposition of the penalty, and the terminal tax date for the tax year to which the return relates.

Annual ICA returns

13. An annual ICA return required to be filed under section 69(1) and 69(2)(a) by an Australian ICA company that is not required to file a return of income for an income year that corresponds to an imputation year (IR4J) are also subject to the late filing penalty regime. A 30-day notice will automatically be issued when the annual ICA return has not been filed by the due date.
14. Following that period, the \$250 penalty is automatically imposed.

Multi-rate PIE returns

15. The late filing penalty process for these returns is the same as for annual ICA returns. The amount of the penalty is also set at \$250.

Residential Land Withholding Tax statements

16. The person liable to file an RLWT statement under section 54B is liable to a late filing penalty when the statement is not filed by the due date. This is not an automated process. However, the 30-day notice will still be issued when appropriate. Note that this provision also applies when a **"Nil" return** is required under section 54B(2). Following that 30-day period, the \$250 late filing penalty will be imposed.

Employment income information

17. From 1 April 2019, most employers must payday file requiring them to file employment income information within certain timeframes for each payday instead of filing an Employer monthly schedule (IR348).
18. While employers are getting used to the new payday filing rules Inland Revenue will take a three-stage approach to the application of any late filing penalties.
 - The first time an employer fails to file employment income information by the due date, the Commissioner may initially look to educate and assist employers to comply with this requirement.
 - Future defaults may result in the issue of a warning notice to the employer advising a late filing penalty will not be imposed this time, but in future if the information is not filed on time a late filing penalty of \$250 will be imposed.
 - If, within 12 months of the warning notice being issued, a further default in filing employment income information occurs, a late filing penalty will be imposed in respect of that employment income information.

Note that this three-stage approach, involving the first education step, is intended to apply only while employers get used to their new payday filing obligations. In time it is intended that Inland Revenue will revert to using a two-stage approach, involving a warning letter, and

then imposing a late filing penalty if a further default occurs within 12 months.

Taxpayers will be advised before any change to the two-stage approach is implemented.

19. The late filing penalty of \$250 will be a single penalty imposed monthly regardless of how many times an employer fails to provide the employment income information during a month.
20. If, following the warning notice, the employer files all employment income information on time for 12 months and then defaults again, a further warning notice will be issued. That is, **the customer has a "clean sheet" and the process restarts.**
21. **There is no longer a requirement for employers to file "Nil" returns when no employment occurs for a month.** Inland Revenue expects to be able to determine when late filing penalties should be imposed. However, employers should advise Inland Revenue if they expect in future not to file employment income information in some months when this has previously happened.
22. The due date for payment of a late filing penalty is 30 days after the end of the month in which the information was due to be filed.

GST returns

23. The first time a registered person files the GST return late, they will be advised that if they are late in filing another of the GST returns within the next 12 months a late filing penalty will be imposed on that second late return. If the registered person files all the GST returns on time for the 12 months following a warning notice and then defaults again, a further warning notice will be issued. That is, **the customer has a "clean sheet" and the process restarts.**
24. The amount of the late filing penalty for GST returns are:
 - \$250 if the invoice or hybrid basis is used at the time the return is due; or
 - \$50 if the payments basis is used at the time the return is due.
25. The penalty is due by the 28th of the second month following the end of the relevant taxable period (or 15 February if the late return was due 15 January or 7 June if the late return was due 7 May).

Reversal or remission of late filing penalty

26. The Commissioner's practice is that the late filing penalty may be reversed if:
 - the return was filed before the date the late filing penalty was imposed, but had not been "lodged" by Inland Revenue; or
 - the return or employment income information was not required to be filed; or

- In respect of employment income information, the taxpayer did not pay any salary or wages even though a registered employer.
27. The Commissioner's practice is that the late filing penalty may be remitted if the legislative criteria regarding the remission of penalties and interest contained in sections 183A or 183D are met. Remission of penalties and interest is discussed in Standard Practice Statement 18/04
28. The Commissioner's practice is that the late filing penalty will not be remitted if:
- The taxpayer has an extension of time arrangement as a client of a tax agent, but the agent had not notified the Commissioner that the taxpayer was their client before the late filing penalty was imposed.
 - The taxpayer was granted an extension of time arrangement (either as a client of a tax agent or individually), after the late filing penalty was imposed.

This Standard Practice Statement is signed on 30 May 2019.

Rob Wells
Manager, OCTC Technical Standards

APPENDIX: Legislation

Tax Administration Act 1994

139A Late filing penalties

- (1) This section applies to tax returns required to be furnished under sections 33, 41 to 44, and 79 (in this Part, "annual tax returns"), the annual ICA return required to be furnished under section 69(1) and (2)(a) by an Australian ICA company that is not required to furnish a return of income for a tax year, the reconciliation statement required to be provided under regulation 3 of the Accident Rehabilitation and Compensation Insurance (Earnings Definitions) Regulations 1992 or regulation 15 of the Accident Insurance (Premium Payment Procedures) Regulations 1999 or any successor to that regulation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001, and the employment income information required to be provided under sections 23E to 23J.
- (2) A taxpayer is liable to pay a late filing penalty if-
 - (a) the taxpayer does not complete and provide on time -
 - (i) an annual tax return;
 - (ii) an annual ICA return required to be furnished under section 69(1) and (2)(a);
 - (iii) a reconciliation statement;
 - (iiib) a return required to be furnished under section 57B;
 - (iiic) a statement for payment of RLWT required to be provided under section 54B
 - (iv) their employment income information; and.
 - (b) The Commissioner notifies the taxpayer that the penalty is payable.
- (3) The late filing penalty for an annual tax return for a taxpayer with net income-
 - (a) Below \$100,000, is \$50;
 - (b) Between \$100,000 and \$1,000,000 (both figures inclusive), is \$250;
 - (c) Above \$1,000,000, is \$500.
- (4) The late filing penalty for an ICA return or reconciliation statement, or employment income information is \$250.
- (5) Except in the case of a late filing penalty resulting from an employment income information or from a tax return required under sections 16 to 18 of the Goods and Services Tax Act 1985, the Commissioner must, not less than 30 days before imposing a late filing penalty, -
 - (a) Send notice to a taxpayer that a late filing penalty may be imposed if a return specified in the notice is not filed; or
 - (b) Publicly notify that a late filing penalty may be imposed on taxpayers who omit to file the required return.
- (6) Subsections (7) to (9) apply in relation to a late filing penalty when a taxpayer fails to provide income information to the Commissioner by a due date when, for the 12-month period before the due date, the taxpayer has delivered on time all the required income information.
- (7) Subject to subsection (9), the Commissioner must notify the taxpayer,-
 - (a) first, that a late filing penalty will be payable for a further failure to provide income information on time:

- (b) secondly, that the penalty is payable when a further failure occurs after the matter referred to in paragraph (a) has been given.
- (8) For employment income information, the maximum penalty that may be imposed in relation to a month, regardless of the number of failures to provide employment income information, is \$250.
- (9) Despite subsection (7), a taxpayer is not liable to pay a late filing penalty in relation to employment income information if the Commissioner considers that, in a particular case or class of cases, a penalty should not be imposed. However, the **Commissioner's discretion may be exercised only if-**
 - (a)
 - (b) it is necessary because of resource constraints imposed on the Commissioner during the period of co-existence of two Inland Revenue software platforms, and
 - (c) **the taxpayer's non-compliance** is not serious or unreasonable.

139AAA Late filing penalty for GST returns

- (1) This section applies to a tax return (a GST return) required to be furnished by a registered person under sections 16 to 18 of the Goods and Services Tax Act 1985.
- (2) A registered person is liable to pay a late filing penalty if-
 - (a) the registered person does not complete and provide a GST return by the due date for filing the GST return; and
 - (b) the GST registered person has failed to file on time a GST return due in the period-
 - (i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and
 - (ii) ending before the due date; and
 - (c) the Commissioner notifies the registered person that the penalty is payable.
- (3) The late filing penalty for a GST return for a registered person is-
 - (a) \$250, if on the due date for filing the GST return the registered person accounts for tax payable on an invoice basis or hybrid basis; or
 - (b) \$50, if on the due date for filing the GST return the registered person accounts for tax payable on a payment basis.
- (4) The Commissioner must-
 - (a) give notice to the registered person that a late filing penalty will be payable for a further failure to file a GST return on time, if the registered person has filed on time all GST returns due for filing in the period-
 - (i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and
 - (ii) ending before the due date; or
 - (b) give notice to the registered person that the penalty is payable, if the registered person has not filed on time all GST returns due for filing in the period referred to in paragraph (a).

Due date for payment of late filing penalty

The following provisions set out the due dates for payment of late filing penalties:

- Section 142 (1) - due date in respect of returns and reconciliation statements;
- Section 142(1A) - due date in respect of employment income information;
- Section 142(1B) - due date in respect of GST returns required by sections 16 to 18 of the Goods and Services Tax Act 1985.