The Commissioner's guidelines as to when he or she will write off tax debt and remit and refund tax.

Introduction

This Guide explains the Commissioner's guidelines as to when he or she will write off tax debt and/or remit and refund tax.

See *PR 2024/5 Commissioner's guidelines for write off of tax debt and remission and refund of tax* available on the IRD website, for more details on this topic.

This Guide provides the Commissioner's guidelines on how the discretion given to the Commissioner in the Act to write off tax debt and to remit and refund tax may be exercised. In providing these guidelines, there is no intention to lay down conditions that may restrict the exercise of the Commissioner's discretion. Nor does the Ruling or this Guide represent a general exercise of the Commissioner's discretion. Rather, the guidelines are provided to assist tax officers in determining when the discretion should be exercised and to help inform taxpayers of the principles that tax officers will apply in considering the exercise of the discretion. The Ruling and Guide apply where a taxpayer has made a request for remission of a tax debt or where the Commissioner exercises his discretion to write off tax under the Act.

The Commissioner may reverse a remission or refund of tax if the remission or refund was made on the basis of false or misleading information provided by the taxpayer.

The Commissioner must not remit or refund tax unless the Commissioner is satisfied that the tax has not been passed on by the taxpayer to another person.

The Act provides that a taxpayer, who is a natural person, may apply in writing to the Commissioner to remit or refund some or all:

- tax payable by the taxpayer; or
- tax paid in the financial year in which the request is made on the ground of serious hardship to the taxpayer.

Where the taxpayer applies the Commissioner must:

(a) serve the taxpayer with a written notice of the decision of the Commissioner; and

(b) if the decision is to remit or refund:
  (i) remit by issuing an amended tax assessment; or
  (ii) refund by paying the taxpayer the amount refunded (but interest is not payable on the amount refunded).

The Act provides that the Commissioner may write off tax payable under a tax law if the Commissioner determines that collection of the tax:

(a) is uneconomic; or
(b) is impractical; or
(c) in the case of a taxpayer who is a natural person, would cause that person serious hardship.

It should be noted that the Commissioner has the power to write off tax debt in his own right where it is apparent that serious hardship exists as there is no provision in this section which requires a taxpayer to apply for write off.

However, where serious hardship is a matter of personal circumstances, the taxpayer must apply in writing and provide evidence.

The Act provides that the circumstances in which the Commissioner may determine that the collection of tax is uneconomic, is impractical or would cause serious hardship as including the following:

	Circumstance	Write off reason
(a)	The taxpayer is dead and the taxpayer's estate has been distributed	Impractical/Uneconomic
(b)	The taxpayer is bankrupt	Impractical
(c)	The taxpayer has been liquidated	Impractical
(d)	The taxpayer has been removed from the register of companies because it is no longer in existence or otherwise dissolved	Impractical
(e)	The taxpayer is seriously ill or incapacitated	Impractical/would cause serious hardship
(f)	The taxpayer is serving a term of imprisonment	Impractical
(g)	The taxpayer is unable to be located or resides overseas.	Impractical
(h)	The taxpayer's debt is greater than the 7 year statutory record keeping period and the Commissioner has not attempted to recover the debt	Impractical/Uneconomic
(i)	The taxpayer never having had a requirement to file a tax return or other document under a tax law;	Incorrect imposition of tax.

The definition of "**uneconomic**" is not provided by the Act. The Commissioner takes the view 'uneconomic' means that the cost of recovering the debt is estimated to be more than the value of the debt. In estimating the potential recovery costs, the Commissioner will take into account the value of salaries of tax officers, other Inland Revenue resources, resources of other government agencies, costs of engaging external legal experts and other experts, travel, communications and any other relevant expense.

The definition of "**impractical**" is not provided by the Act. The Commissioner takes the view that 'impractical' refers to circumstances where, irrespective of whether the debt is uneconomic or not, it is not possible to collect the debt.

Example:

If the taxpayer cannot be located, and some years have passed, it would be impractical to pursue the debt. If the taxpayer is permanently overseas, and they can be contacted but are unwilling to pay the debt, it would be impractical to pursue the debt as the taxpayer is outside the Solomon Islands legal jurisdiction.

The Act also provides that in any case where the Commissioner writes off tax in a circumstance set out in paragraph (a) to (c) in the table above, the Commissioner may reinstate all or part of the tax written off if:

(a) additional funds due to the taxpayer's estate are discovered after the taxpayer's estate has been distributed; or

(b) the Commissioner receives, by operation of law, additional funds in respect of the taxpayer after the taxpayer is judged bankrupt or is liquidated.

Further, the Commissioner may reverse a write off if the write off was made on the basis of false or misleading information provided by the taxpayer.

The Commissioner considers **"serious hardship**" includes the circumstances where the taxpayer is affected by serious illness or incapacitation, financial misfortune, the impacts of natural disasters or riots, or family tragedy. The Commissioner considers a family tragedy would include a very sad event or situation, such as one involving death or suffering of a close relative.

Serious hardship also includes circumstances where a taxpayer is unable to provide the following for themselves, their family or dependents:

- Food and accommodation;
- clothing;
- medical treatment;
- education; and
- other basic necessities.

The Commissioner may ask the taxpayer to provide recent evidence to support their claim of serious hardship. The evidence should support the taxpayer's claim of their current financial circumstances. Any documents the taxpayer provides should be dated within four weeks of supplying them.

Types of evidence can include the following:

- official eviction notice (not a warning of possible eviction due to rental arrears);
- pending disconnection of essential services, like water, electricity or gas (does not include mobile phone or internet bills);
- notice of impending legal action;
- letter from a charitable organisation regarding loss of employment or inability to provide for basic necessities;
- bank notice, for example, overdraft call or mortgaged property repossession;
- overdue medical bills;
- letter from a doctor verifying the inability to earn an income due to illness or caring for a sick family member;
- final notice from school regarding payment of mandatory fees;
- funeral expenses
- repossession notice of essential items, like a car or motorcycle.

In addition to the factors listed above, the taxpayer must also be able to demonstrate that they do not own any assets which can be sold to pay some or all of the tax debt.

Examples:

(a) Taxpayer A, a sole trader, suffers a serious stroke which means she is unable to run her business. She has a tax debt of $10,000. The taxpayer's only asset is her family home. The Commissioner would consider that the taxpayer is suffering from serious hardship and would write off the debt.

(b) Taxpayer B, a sole trader, is imprisoned for a period of 5 years. It is determined by the Commissioner that it is impractical to collect the outstanding tax owed by Taxpayer B of $5,000 and the Commissioner would write off the debt.