



## **Guide to when the Commissioner will reduce penalties from the maximum prescribed amount based on culpability and remission of administrative penalties.**

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### **Introduction**

This Guide explains when the Commissioner will reduce penalties from the maximum prescribed amount based on culpability and remission of administrative penalties.

See *PR 2024/4 Commissioner's guidelines on when he or she will reduce penalties from the maximum prescribed amount based on culpability and remission of administrative penalties* available on the IRD website, for more details on this topic.

This Guide provides guidelines on how the Commissioner's power in the Act to impose administrative penalties 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 represent a general exercise of the Commissioner's discretion, but rather gives taxpayers and tax agents the principles that the Commissioner will apply in exercising his or her discretion. Also, the guidelines are provided to assist tax officers in determining when the discretion.

### **Assessment of administrative penalty**

Under the Act the Commissioner may impose an administrative penalty and in doing so, must not impose an administrative penalty should be exercised and to help ensure that taxpayers receive consistent treatment.

The Guide considers the assessment and remission of administrative penalties for those penalties where there are both penalty units and a tax shortfall imposed, namely:

- false or misleading statement to a tax officer;
- failure to take reasonable care in taking a tax position;
- gross carelessness in taking a tax position;
- taking a tax position in disregard of a clear tax law obligation with intent to reduce or remove a tax liability or to obtain a tax benefit.

The factor of the seriousness of the taxpayer's behaviour and the number of occasions the behaviour has occurred are significant matters in the amount to remit as is the level of tax shortfall.

Whilst the term "tax shortfall" is not defined in the TAA, the Commissioner considers a tax that exceeds the prescribed maximum penalty amount for the administrative penalty.

The Minister has prescribed maximum penalties for the administrative penalties in the Tax Administration Regulations 2022. (*see the Public Ruling PR 2024/4 Appendix 1 for a copy of the Regulations*)

In view of the fact that the maximum penalty is the same for each type of behaviour, the

Commissioner will, in making an assessment imposing an administrative penalty, adopt a graduated approach to reduction of the penalties based on culpability and not charge the maximum penalty in every case.

## Principles to consider in the reduction of penalties

The decision to reduce the penalty may be made in the making of an assessment. The penalty will not be reduced where IRD considers the case warrants referral for criminal investigation and/or prosecution. Where payers are prosecuted, they cannot be made liable for an administrative penalty for the same offence.

The decision to reduce the maximum penalty should:

- consider the merits of each case, the matters relevant to the penalty and not irrelevant matters;
- be made with just cause and not on the basis of random choice or personal impulse;
- be made in good faith; and
- consider the taxpayer's behaviour.

shortfall, for a return period, means the difference between the tax effect of –

- (a) a taxpayer's tax position for the return period; and
- (b) the correct tax position for that period,

when the taxpayer's tax position results in too little tax paid or payable by the taxpayer or another person or overstates a tax benefit, credit, or advantage of any type or description whatever by or benefitting (as the case may be) the taxpayer or another person.

The Commissioner's officers will consider reducing the following level of penalties from the maximum prescribed penalties based on culpability in the table on the next page:

Behaviour of the taxpayer	Level of reduction from maximum Penalty amount	Assessment of Penalty amount
<p><b>Worst type of behaviour</b></p> <p>A taxpayer's behaviour is deliberate or involves fraud for any tax shortfall amount, or organised crime, or threatening an IRD officer or offering an IRD officer a bribe.</p>	0%	100%
<p><b>Highest level of behaviour which breaches the tax law</b></p> <p>A taxpayer knowingly decides to take a tax position that is not a reasonably arguable position in disregard of a clear obligation under a tax law.</p> <p><b>And</b> the tax shortfall is greater than \$100,000 or 20% of the tax payable for the tax year on the basis of the taxpayer's tax return, whichever is the greater.</p>	25%	75%
<p><b>Medium level of behaviour</b></p> <p>A taxpayer's actions demonstrate gross carelessness, showing a disregard or indifference to their obligations or a taxpayer makes a false and misleading statement.</p>	50%	50%

<p><b>Least serious level of behaviour</b> A taxpayer fails to exercise the care that a reasonable, ordinary person would exercise to fulfil the taxpayer's tax obligations</p>	75%	25%
<p><b>Voluntary disclosure</b> On their own initiative, before being told of anticipated audit action, a taxpayer brings their failure to withhold or a tax shortfall to the attention of IRD</p>	100%	Nil
<p><b>Note:</b> repeated types of behaviour may indicate the taxpayer is being careless. If so, this level of remission will not apply. Where a shortfall amount occurs that is greater than \$100,000 or 20% of the tax properly payable for the tax year on the basis of the taxpayer's tax return, no level of reduction from maximum penalty amount will apply</p>		

The Commissioner may not reduce the penalty by the above percentage if there are other factors warranting further increase or decrease of the penalty amount.

An officer may decrease the level of reduction if there are aggravating factors such as where the taxpayer:

- has taken steps to prevent or hinder IRD from finding out about the tax shortfall; or
- has been penalised in a previous period for a tax shortfall and there has been no improvement in their compliance.

IRD may increase the level of reduction if there are mitigating factors such as where the taxpayer:

- tells IRD of the tax shortfall after IRD has advised of an intention to conduct an audit, and
- the officer estimates the disclosure is likely to have saved IRD a significant amount of time or

resources in the conduct of the audit.

### **Remission of administrative penalty**

The Act provides that the Commissioner may remit part or all of an administrative penalty imposed either on:

- on the Commissioner's own initiative; or
- on the application in writing of the person assessed for the penalty under the Act.

The grounds for a remission of the penalty are set out in the Act and summarised in the following table on the next page:

	<b>Ground for remission</b>	<b>Example</b>
(a)	serious hardship to the person subject to the penalty,	Serious hardship includes financial misfortune, health or impacts of natural disaster or riots. (See PR 2024/5)
(b)	the incorrect imposition or calculation of a penalty;	An incorrect imposition would be where a taxpayer had lodged a return on time but as a result of an Inland Revenue mistake, a penalty was imposed.  An incorrect calculation would be where the start date of the penalty calculation was recorded incorrectly.
(c)	circumstances that the person subject to the penalty cannot change or influence	Circumstances that a person cannot change or influence include serious illness or absence from the country as well where it is impractical or uneconomic to collect the penalty such as the circumstances outlined in section 68 of the Act. (See PR 2024/5);
(d)	an honest unintentional failure to pay unpaid tax by the person subject to the penalty,	an honest unintentional failure to pay unpaid tax includes being unaware of the tax owing because the person did not receive any notice;
(e)	any other prescribed ground	At present the Minister has not prescribed any other grounds.

### Examples

<b>No</b>	<b>Example</b>	<b>Application of Ruling</b>
1	Taxpayer A does not use a cash register she has in her store. She does not issue receipts and puts cash in a drawer. When the time comes to lodge her tax return, she only declares 50% of the sales made	This type of behaviour is deliberate and involves fraud. There are no mitigating factors and no reason not to impose the maximum penalty amount.
2	Taxpayer B uses the cash register in his business. He does not make sure that staff put all sales through the cash register and does not keep records of all sales. At the end of an audit, Inland Revenue advised Taxpayer B about the areas where the records were inadequate and what was required to remedy the situation. The taxpayer was advised that it was likely that the correct amount of taxable income would be returned if the suggested improvements of IRD to his record-	The facts indicate that the shortfall amount was caused by Taxpayer B's recklessness which displays a medium level of behaviour and warrants a medium level of penalty.

	<p>keeping practices were implemented in full. Rather than following the advice, the taxpayer made minor changes to their record keeping system which did not improve the adequacy of his records. Two years later, taxpayer B was subject to an income tax audit. A shortfall amount was detected which was caused by inadequate record keeping</p>	
3	<p>Taxpayer C uses her cash register every day to deposit all sales cash and EFTPOS. On one day, the cash register breaks down and some 10 sales totalling \$1,000 are not recorded and Taxpayer C forgets to tell her tax agent when the tax return is being prepared.</p>	<p>This type of behaviour is not deliberate and there is a mitigating factor to not impose the maximum penalty amount. It displays the least level of behaviour and warrants only a minimum level of penalty.</p>