

Public Ruling

PR 2024/2 – Meaning and Penalty relating to false and misleading statements, reasonable care, gross carelessness and intentional disregard.

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PREAMBLE

PREAMBLE: This publication is a Public Ruling made under the Tax Administration Act 2022. The number, subject heading, what this Ruling is about (including Class of person/arrangement section), Date of effect, and Ruling parts of this document are a 'public ruling' for the purposes of section 149 of the Taxation Administration Act 2022 and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner.

WHAT THIS RULING IS ABOUT

1. This Ruling gives the Commissioner's interpretation of what constitutes a false and misleading statement for the purposes of section 119 of the Tax Administration Act 2022 (TAA) which imposes an administrative penalty for a person making a false or misleading statement. Section 130 of the TAA makes the false and misleading statement a tax offence as well.
2. The Ruling also gives the Commissioner's interpretation of the concepts of reasonable care, gross carelessness and intentional disregard for the purposes of sections 120, 121 and 122 of the TAA respectively.

Class of person/arrangement or transaction

3. This Ruling applies to a statement or actions made by a person in respect of a tax law.

Background

4. The administrative penalty regime contained in the TAA applies from 1st January 2023 to all taxes administrated by the Commissioner.
5. The regime sets out uniform administrative penalties that apply to persons that fail to satisfy certain obligations under different tax laws.
6. The administrative penalty provisions consolidate and standardise the different penalty regimes that previously existed in the Tax Acts
7. Broadly, Division 3 of Part 8 of the TAA imposes penalties such as:
 - failure to keep and maintain the tax records required by a tax law;
 - failure to apply for a TIN;
 - failure to update TIN information;
 - failure to display a tax agent certificate;
 - late filing;
 - 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 obtain a tax benefit.
8. This Ruling considers the last 4 types of penalties.

RULING

False or misleading statement

What is a statement?

9. A statement is anything communicated to the Commissioner or to another person exercising powers or performing functions under a tax law, including a statement made to a tax officer in the course of her or his duties.
10. A statement may be made or given in writing, orally or in any other way, including electronically. Statements may be made in:
 - correspondence;
 - responses to requests for information;
 - a notice of objection;
 - a request for an amendment to an assessment;
 - an answer to a questionnaire; or
 - connection with an audit or investigation.
11. In the context of self-assessment, where persons determine their own tax liabilities and pay the amounts due by dates specified in the law, a statement will include entering an amount or other information at a label on an application, approved form, certificate, declaration, notice, notification, return or other document prepared or given under a tax law.
12. Entering an amount at a label on a return will generally be a statement of mixed fact and law in so far as it indicates that the amount returned was received, expended or withheld etc. and that the amount was the correct amount assessable, deductible or reportable etc.
13. A statement may be made where a person fails to include information in a document or approved form when there is a requirement to do so. Although at first it appears that no statement was in fact made, the person will be taken to have made a negative statement, for example, that there was no liability or that an event did not occur.
14. However, if no statement is made because of a failure to lodge an approved form (for example, an Income Tax return) the person is not liable for a penalty. However, the person may be liable to a penalty under subsection 121 of the TAA

for **gross carelessness** for failing to provide a document necessary for determining a tax related liability and under section 118 for late filing by failing to lodge a return, statement, notice or other document on time.

15. **Gross carelessness** is more than a lack of attention or care. It is considered to be a conscious, voluntary act or omission in reckless disregard of a legal duty and the consequences to another party.

Is the statement false or misleading in a material particular?

16. Whether a statement is false is a question of fact. Although it is not defined in the TAA, the Commissioner considers that a statement or omission is misleading if it is reasonably likely to mislead a person belonging to the class of persons to whom it is directed. A penalty is only imposed if the statement is false or misleading in a ***material particular***.
17. A statement is misleading if it creates a false impression, even if the statement is true. It may be false or misleading because of something contained in the statement, or because something is omitted from the statement. Even if it is factually true, it may be misleading because it is uninformative, unclear or deceptive.
18. A statement is false if it is contrary to fact or wrong irrespective of whether or not it was made with knowledge that it was false.
19. If a statement was correct at the time it was made but is subsequently made incorrect because of a retrospective amendment to the law, the statement is not later considered false or misleading. It is the nature of the statement at the time that it was made that is relevant.

Did the person who made the statement not know and could not reasonably be expected to know that the statement was false or misleading in a material particular?

20. No penalty is imposed where the person did not know (subjectively determined) and could not **reasonably be expected to have known** (objectively determined) that the statement or omission was false or misleading.
21. The Commissioner considers “**Reasonably be expected to know**” means whether a reasonable person, in the same circumstances as the person, would be likely to have knowledge of the truth in making the statement. In practice, this

means that all actions leading up to making the statement should be taken into account, including record keeping, reporting and using a registered tax agent.

22. Whether a person could not reasonably be expected to have known is considered objectively. This means that the test is not whether the person could have been expected to have known, but rather whether they have in fact the knowledge. It is generally the case though, that where a person makes a genuine effort to ensure that statements made to the Commissioner are correct, it is likely that the facts will show that they could not reasonably be expected to have known that the statement or omission was false or misleading.
23. The standard/level of knowledge in the circumstances of the person is not meant to be overly onerous. It does not mean that a person or their agent is required to demonstrate the highest possible level of knowledge. The standard is that of an everyday person in the circumstances of the particular person.
24. It should be noted that generally no one factor, taken in isolation, will be sufficient to determine knowledge or the lack of knowledge. All the circumstances need to be considered and it is a question of degree as to the relevance of a particular factor.
25. A person may make a statement about their own tax affairs or about the tax affairs of a person which the person represents. Determining what would amount to knowledge in the circumstances of the person involves recognition of that person's:
 - personal circumstances (such as age, health and background)
 - level of knowledge, and/or
 - understanding of the tax laws.
26. The physical and mental health, and the age, of a person can be relevant in determining whether they could be expected to have knowledge. For example, when a person's incapacity is serious enough that it infringes on most aspects of their daily life, it is more likely that they will be found not to have knowledge for a person in that situation. By contrast, a person in full health may be taken to have knowledge or reasonably expected to have that knowledge.
27. Other factors that may be relevant include the person's level of tax knowledge and level of education. The higher the level of tax knowledge or education, the more likely it is that the person is able to understand what is necessary when making

statements to the Commissioner. Those with a more comprehensive understanding are expected to demonstrate they have met and exercised a higher standard when providing information to the Commissioner.

28. New entrants to the tax system will generally have a lower level of knowledge and understanding of the tax laws than persons who have been in the tax system for some time. New entrants will not be penalised for false or misleading statements in their first year if they have made a genuine attempt to comply with tax obligations. However, the new entrant will be liable to a penalty under section 119 of the TAA if they have used the services of a registered tax agent and the agent is considered to have knowledge or reasonably expected to have that knowledge. New entrants do not include businesses whose principals have previously been involved in business operations.
29. Where substantial tax law changes impact on a person's ability to understand their entitlements or obligations under the law and as a result the person makes a false or misleading statement, provided that they have made a genuine attempt to comply with the new statutory requirements:
- in the first 12 months from the date of application of the new law, or
 - if there is an extended transitional period, during that transitional period,
- the person will not be considered to have knowledge or reasonably expected to have knowledge that the statement was false or misleading in making a statement.
30. Where a person claims to have made a genuine attempt to comply with substantial changes in the law the objective facts or reasonable inferences should support this claim. Where there is evidence of an attempt to avoid or disregard the requirements of the law, the person will not have made a genuine attempt to comply.
31. Further circumstances to be taken into account when determining whether a person is considered to have knowledge or reasonably expected to have that knowledge include:
- the relative size of the shortfall compared to the person's tax liability;
 - the type of the item reported and the relative size of the discrepancy between what was reported and what should have been reported;

- the complexity of the law and the transaction (the difficulty in interpreting complex legislation); and
- the difficulty and expense associated with taking action to reduce or eliminate the risk of making an error.

32. Consideration will be given not only to the nature of the shortfall but also to the relative size of the error arising from the statement. In other words, the bigger the shortfall, the greater the likelihood that the person or his or her registered tax agent will be considered to have knowledge or reasonably expected to have that knowledge.

33. Factors indicating that a person is considered to have knowledge or reasonably expected to have that knowledge include:

- taking an interpretative position with respect to an item that is frivolous or which lacks a rational basis;
- repeated errors where the person has been advised or is otherwise aware that mistakes have previously been made;
- an error which could have been avoided with relative ease, for example, systems failures the risk of which are foreseeable or for which the person has not established adequate safeguards and monitoring; and
- an error which results from the inadequate training of staff, in particular inexperienced or temporary staff.

34. An error in adding, subtracting or transposing amounts by a person may lead to the conclusion that the person is considered to have knowledge or reasonably expected to have that knowledge, but an error is not conclusive evidence of a person being considered to have knowledge or reasonably expected to have knowledge that the statement was false or misleading. An error made by a division of a business which leads to an error in the person's tax return may be considered to have knowledge or reasonably expected to have that knowledge, but this will depend on factors such as the circumstances in which the error was made and the procedures in place to prevent or detect such errors.

35. For an individual who prepares their own tax return, an earnest effort to follow instructions would usually be sufficient to pass the test. For example, if a taxpayer claimed a deduction for business expenses without having receipts, then this would indicate that the taxpayer had knowledge or reasonably expected to have

knowledge that the statement was false or misleading in making the claim, since the Guides/Instructions emphasise the requirement to keep records for business expenses.

36. For a person conducting a business, the “knowledge” or “reasonably expected to have that knowledge” test could be satisfied by the person putting in place an appropriate record keeping system and other procedures to ensure that the income and expenditure of the business are properly recorded and classified for tax purposes. The fact that an employee of the business makes an error would not necessarily mean that the person is subject to a penalty. For example, a penalty would not apply where the taxpayer can show that its procedures are designed to prevent such errors from occurring. What is reasonable will depend, among other things, on the nature and size of the business, and could include, for example, internal audits, sample checks of claims made, adequate training of accounting staff and instruction manuals for staff.
37. A person that relies on a third party (excluding a registered tax agent) for advice of a fact that is relevant to the preparation of a return or other tax document will not be taken to have knowledge or reasonably expected to have knowledge that the statement was false or misleading unless the person knew or could reasonably be expected to know that the information was wrong. For example, if a bank provides an interest statement and understates the amount of interest earned, as long as the person has no reason to believe that the statement is wrong, the person would not be liable for a section 119 penalty on the understatement.

Reporting tax obligations

38. Where a person makes a statement based on a conclusion reached as a result of interpreting the law in a particular way, the conclusion must be reasonable for an ordinary person to come to in the same circumstances.
39. If a person is uncertain about the tax treatment of an item, the person should make reasonable enquiries to resolve the issue. If they do not, the conclusion they have reached as a result of interpreting the law in a particular way may not be a reasonable conclusion that an ordinary person would come to in the same circumstances. Reasonable enquiries would generally include consulting a registered tax agent, contacting Inland Revenue or consulting an Inland Revenue publication on the website or other authoritative reference in an effort to satisfy the person about the appropriate tax treatment of the item. However, a failure to provide adequate information when seeking advice, a failure to provide reasonable instructions to a registered tax agent, or unreasonable reliance on a

registered tax agent or on wrong advice may still expose the person to a penalty for providing a false and misleading statement.

40. The reading of what a person believes to be the relevant provision of a tax law might not constitute a reasonable enquiry unless the person had reasonable grounds for believing that they had understood the requirements of the law.
41. The “knowledge” or “reasonably expected to have that knowledge” test that the statement was false or misleading focuses on the efforts taken by the person or their agent in resolving the tax treatment of a particular item. Full research may be enough to satisfy the requirement of no knowledge.
42. Where a person or their agent adopts a tax treatment that is not consistent with the Commissioner's view, no knowledge or not reasonable to expect the person to have that knowledge will apply where they have made a genuine effort to research the issue and there is some basis for the position adopted.
43. However, if a person obtains a private ruling on the application of a tax law and disregards the ruling, this may constitute knowledge that the statement was false or misleading where a genuine effort was not made to research the issue. Alternatively, where the statement relates to a tax law, the person will be liable to the section 119 penalty.
44. If the position is reasonably arguable (see Public Ruling PR 2023/3) and a genuine effort was made to arrive at that position then it may be considered that the person does not have knowledge or is not reasonably expected to have that knowledge irrespective of the amount of the shortfall.
45. Deciding whether the person or registered tax agent has satisfied the knowledge test will depend on whether the process taken to reach the position was reasonable in the circumstances. The more substantial the amount of the shortfall, the greater the degree of knowledge needed which should be taken prior to adopting a position.
46. Employers are responsible for the acts of their employees provided the acts are within the acts authorised for that employee. Therefore, if an employee fails to meet the knowledge standard, the employer is liable for the failure. This is so whether the employer is a natural person or not. The only difference is that a non-natural employer must act through agents and employees as it is incapable of acting otherwise.

Using an agent

47. Using the services of a tax agent or tax adviser does not of itself mean that a person discharges the obligation to take reasonable care. It remains the person's responsibility to properly record matters relating to their tax affairs and to bring all of the relevant facts to the attention of the agent in order to show reasonable care. For example, if a taxpayer fails to alert his accountant to the fact that he has derived a substantial amount of interest income and there is no acceptable explanation for the omission. The failure to disclose the interest income, the Commissioner considers is not reasonable. A person that engages a registered tax agent in these circumstances will be liable for an administrative penalty.
48. If a person has used the services of a registered tax agent, both the person and the agent must pass the knowledge test. Where the person's agent may be considered to have knowledge or reasonably expected to have knowledge that the statement was false or misleading, the person will be held liable for any penalty imposed.
49. A person that uses an agent must provide the agent with all necessary information. To be taken to have passed the knowledge test, the person is expected to:
- properly record matters relating to tax affairs;
 - provide honest, accurate and complete information in response to questions asked by the agent; and
 - bring to the attention of the agent information the person could be reasonably expected to have known was relevant to the preparation of the income tax return, other return or other document.
50. A person's failure to meet these expectations would generally indicate knowledge on the person's part that the statement was false and misleading. If there is nothing to alert the agent, the agent will not be taken to have knowledge solely because of the person's failure to inform him/her. However, if the agent has reasonable grounds for suspecting that an inquiry could prompt further information, such as interest declared in the tax return of the previous year, that is necessary to complete an accurate return or document, the agent must take that step if the agent is to not have knowledge.
51. The knowledge required by a registered tax agent is higher than that expected of an ordinary person due to the knowledge, education, skill and experience of the

practitioner obtained from continual exposure to the operation of the financial system and similar transactions for numerous clients. When examining a person's affairs, a registered tax agent would be expected to apply this experience to the person's situation and to ask the questions necessary to correctly prepare the client's return. However, this does not mean that a registered tax agent will always be expected to display the highest level of skill or foresight of which anyone is capable. The standard is that of a prudent professional of normal intelligence in the circumstances of the registered tax agent.

Who is liable for the penalty?

52. Generally, where a statement is made by a person's authorised representative, the person will be liable for the penalty. For example, a company will be liable for false or misleading statements made by an employee, public officer or director.

Knowledge test

53. A person should be assumed to have knowledge unless the facts or reasonable inferences suggest otherwise. Where there is some doubt as to whether the person has the appropriate level of knowledge they should be contacted and given the opportunity to explain their level of knowledge prior to making the penalty decision. Conclusions about the level of knowledge a person has should only be made where it is supported by evidence. If the person and their agent have demonstrated that they do not have or could reasonably be expected not to have that knowledge in making the false or misleading statement, then no penalty should be imposed under section 119 because of the provision in subsection 119(2), which provides for no penalty where:
- a. the statement is made by a taxpayer in making a self-assessment return; and is a reasonably arguable position because the person has followed the Commissioner's position or tax laws; or
 - b. the person who makes the statement does not know and could not reasonably be expected to know that the statement is false or misleading in a material particular.
54. Where the Commissioner has already determined that for the purpose of section 119 the person had the knowledge in making the false or misleading statement, it follows that the person cannot reasonably be expected to not have that knowledge. Similarly, if a person is reckless or has shown an intentional disregard of a tax law then they cannot be said not to have knowledge.

Reasonable Care

Meaning of reasonable care

55. The expression 'reasonable care' is not a defined term and accordingly takes its ordinary meaning. A dictionary definition, defines 'care' as '... 3 serious attention; heed, caution, pains' and 'reasonable' as ' 3a within the limits of reason; not greatly less or more than might be expected'. Taking 'reasonable care', in the context of making a statement to the Commissioner or to a person, means giving appropriate serious attention to complying with the obligations imposed under a tax law.
56. The reasonable care test requires a person to take the same care in fulfilling their tax obligations that could be expected of a reasonable ordinary person in their position. This means that even though the standard of care is measured objectively, it takes into account the circumstances of the taxpayer.
57. Reasonable care requires a taxpayer to make a reasonable attempt to comply with the provisions of the tax laws and regulations. The effort required is one appropriate with all the taxpayer's circumstances, including the taxpayer's knowledge, education, experience and skill.
58. Judging whether there has been a failure to take reasonable care turns on an assessment of all the circumstances surrounding the making of the false or misleading statement to determine whether a reasonable person of ordinary judgement in the same circumstances would have exercised greater care.
59. Since the test for establishing negligence is objective, the actual intention of the person said to be at fault is not relevant. The fact that the person has tried to act with reasonable care is not the test - what is relevant is whether, on an objective analysis (that is based on the facts), reasonable care has been shown.
60. The reasonable care test is not a question of whether the taxpayer actually predicted the impact of the act or failure to act, but whether a reasonable person in all the circumstances would have predicted it. The test does not depend on the actual intention of the taxpayer.
61. Another important aspect of the reasonable care test is that 'reasonable' does not mean the highest possible level of care or perfection.
62. The reasonable care test is not intended to be overly difficult for taxpayers. For most taxpayers, a serious effort to follow the Commissioner's Guides, Instructions

and Public Rulings published on the website would usually be sufficient to pass the test.

63. It is only a failure to take reasonable care to comply with a tax law that gives rise to an administrative penalty. The penalty regime therefore does not apply to a failure to take reasonable care to comply with obligations under laws that are not tax laws.

64. The reasonable care test has regard to the efforts taken by a person or their agent to comply with their tax obligations.

No presumption that there is a failure to take reasonable care where there is a false or misleading statement

65. There is no presumption that the existence of a shortfall amount caused by a false or misleading statement necessarily or automatically points to a failure to take reasonable care. Similarly, in cases where there is no shortfall, there is no presumption that the making of the false or misleading statement automatically points to a failure to take reasonable care. The evidence must support the conclusion that the standard of care shown has fallen short of what would be reasonably expected in the circumstances.

66. Case law in Australia has indicated that, in the ordinary case, the mere fact that a tax return includes a deduction which is not allowable is not of itself sufficient to expose the taxpayer to a penalty. Negligence, at least, must be established.

Importance of individual circumstances

67. A failure by a person or their agent to take reasonable care depends on all of the relevant acts or omissions leading to the false or misleading statement. Liability to a penalty will only arise where the particular conduct falls short of the standard of care expected of a reasonable person in the same circumstances. In other words, identifying what ought to have been done or ought not to have been done to avoid the risk of making a statement that is false or misleading reinforces the imposition of penalty for failing to take reasonable care.

68. The appropriate standard of care required in making a statement is not unchallengeable, but takes account of the particular characteristics of the person concerned. Because there is no 'one size fits all' standard, the standard of care that is appropriate in a particular case necessarily takes account of:

- personal circumstances (such as age, health, and background);

- level of knowledge, education, experience and skill; and
- understanding of the tax laws.

69. Another consideration that influences the standard of care that is reasonable in the circumstances is the class of person concerned. A person that conducts a business and has onerous tax obligations arising from complex transactions would be expected to implement appropriate record keeping systems and other procedures to ensure they comply with their tax obligations.

Personal circumstances

70. Personal circumstances have the potential to compromise a person's capacity to comply with their tax obligations. For example, age, mental health or physical incapacity may adversely affect the level of care and attention that can reasonably be expected in the circumstances.

Knowledge, education, experience and skill

71. Other personal attributes such as knowledge, education, experience and skill may also have an impact on the level of care that is reasonable when making statements to the Commissioner. The standard of care required is appropriate with a reasonable person with the same background as the person making the statement.

Standard applicable to a person with expert tax knowledge

72. A professional person with specialist tax knowledge will be subject to a higher standard of care that reflects the level of knowledge and experience a reasonable person in their circumstances will possess.
73. For example, where a taxpayer's agent requests an amended assessment on the basis that a lump sum payment on termination of employment was a bona fide redundancy payment and exempt from tax, tax agent should be expected to know or, at least find out, about the possible treatment of the lump sum payment.
74. Similarly, a taxpayer who is a senior officer in Inland Revenue should, because of his position and experience, be aware that income from his wife's and his business was taxable and by not including it in his income under section 48 of the Income Tax Act would be a failure to take reasonable care. The spouse had been conducting a business of buying and selling cars in partnership with her husband

and the income from this activity meant it was income of the husband under the Act and a person in the husband's position would have had a greater knowledge of the requirements of the Act and responsibilities of the taxpayer than an ordinary citizen and that the volume and frequency of such transactions could lead to a view that the profits were assessable.

75. In determining whether a person having special skill or competence has breached the standard of reasonable care, the appropriate benchmark is the level of care that would be expected of an ordinary and competent practitioner practising in that field and having the same level of expertise.
76. This means that factors such as the size, resourcing, degree of specialisation and the client base of the practitioner are relevant indicators of what represents a standard of reasonable care appropriate to the practitioner's professional peers. For example, what constitutes reasonable care in the case of a statement made by an accountant in a small general practice in Gizo is measured against the standard of care applicable to a reasonable and competent accountant in a practice that has these characteristics rather than a large accounting firm in Honiara.

New entrants to tax system

77. The objective standard of reasonableness that applies is lower for a new entrant to the tax system who has little tax knowledge or experience in interacting with the tax system than a person who has more knowledge or experience. This ensures that a person's behaviour is only penalised if they fail to measure up to the standard of a reasonable person with the same level of knowledge and experience.

Understanding of tax laws

78. In determining the standard of care that is reasonable and appropriate in the circumstances, factors such as the complexity of the law and whether the relevant law involves new measures are also relevant. These factors have the potential to affect a person's capacity to understand their entitlements or obligations under the law.
79. If a person is uncertain about the correct tax treatment of an item, reasonable care requires the person to make appropriate enquiries to arrive at the correct taxation treatment. Such steps include contacting Inland Revenue, referring to an Inland Revenue publication or other authoritative statement, or seeking

advice from a tax agent. The type of enquiry or request for advice that is appropriate will depend on the circumstances. For example, in the context of determining the value of a taxable importation for Goods Tax purposes, it may be appropriate to obtain an expert valuation or seek advice from Solomon Islands Customs Service in order to demonstrate reasonable care.

80. Where a person makes a genuine effort equal with their ability to research and support the position taken, this will be an indicator in favour of the exercise of reasonable care. Even if a person adopts a tax treatment that is inconsistent with the Commissioner's view, reasonable care will still be shown where a genuine effort is made to research the issue and there is a basis for the position taken.
81. In contrast, an interpretative position that is frivolous (not serious) indicates a lack of reasonable care because it is likely to be consistent with making little or no effort to exercise sound judgment. The Commissioner considers that frivolous means something that is not worth serious attention.

Applying for a private ruling

82. Although a person may choose to obtain a private ruling from Inland Revenue on a question of interpretation, failing to do so does not necessarily lead to a failure to take reasonable care. For example, if the taxpayer adopts an interpretative position based on expert tax advice that was also consistent with the commonly held industry view or the taxpayer confirms the position orally with Inland Revenue.

Appropriate record keeping systems and other procedures

83. A false statement arising from an oversight or an error in adding, subtracting or transposing amounts may result from a failure to take reasonable care, but such an error is not conclusive evidence of a lack of reasonable care.
84. Each situation will involve a unique mix of circumstances that requires an enquiry about whether reasonable care is shown or is lacking. For business persons, reasonable care requires the putting into place of an appropriate record-keeping system and other procedures to ensure that the income and expenditure of the business is properly recorded and classified for tax purposes. The following practices are some examples of appropriate procedures:

- regular internal audits;
- sample checking;
- providing adequate staff training; and
- preparing instruction manuals for staff.

85. What is appropriate and adequate for one business will not necessarily be sufficient for a different business. Factors such as the nature and size of the business will clearly be influential in determining what is sufficient in any given case.

86. The reasonable care standard does not require a person to guard against every possible shortfall amount. If a person's accounting systems and internal controls are appropriately designed and monitored to ensure that the likelihood of error is reduced to an acceptable level, this will be consistent with taking reasonable care.

87. However, whilst the possibility of human error cannot be eliminated, if a systemic error is detected and no steps are taken to rectify the problem, this will be a strong indicator that reasonable care has not been taken.

88. Following general industry or business practice is likely to be consistent with taking reasonable care because it will indicate what other businesses in the same or similar circumstances considered appropriate to cover off a foreseeable risk. Likewise, failure to adopt accepted practice indicates a lack of reasonable care because it suggests that the business did not do what others in the same or similar circumstances thought was proper and reasonable.

Relying on information provided by a third party

89. A statement may be false or misleading because it relies on incorrect information obtained from a third party. Whether this reliance indicates a failure by the statement maker to exercise reasonable care will depend on an examination of all the circumstances. Where, for example, a person returns interest income based on incorrect information provided by the particular financial institution, there will not be a failure to take reasonable care unless the taxpayer knew or could reasonably be expected to know that the statement was wrong.

Tax agents relying on third party information

90. Whether a tax agent shows reasonable care by relying on information provided by a client that is incorrect also depends on an examination of all the circumstances. The reasonable care standard is not so demanding as to require a tax agent to extensively audit, examine or review books and records or other source documents to independently verify the taxpayer's information. However, whilst it will not be possible or practical for an agent to examine every item of information supplied, reasonable enquiries must be made if the information appears to be incorrect or incomplete.
91. Meeting this standard requires no more than acting in a way that does not breach the common law duty of care owed to the client. Conduct consistent with discharging that duty of care necessarily means that reasonable care is demonstrated.
92. However, a firm of accountants may be negligent in preparing income tax returns if it does not check the accuracy of depreciation calculations prepared by an unqualified bookkeeper employed by the client and the calculations were incorrect and resulted in an understatement of the plaintiff's taxable income. Negligence would be established because a reasonably careful accountant would have had grounds for questioning the correctness of the calculations to ensure that the information disclosed in the returns was accurate. This may be different to the case where a competent expert prepares the information that is relied upon.
93. These principles are also relevant in determining whether reasonable care has been taken by a tax agent who makes a statement on behalf of a client. If the facts are such that it produced an understatement of tax, there would have been a liability to penalty for failing to take reasonable care. This is because a reasonable accountant of ordinary professional competence would not have placed complete reliance on the accounts prepared by an unqualified bookkeeper.
94. On the other hand, a tax agent who relies on information prepared by an expert will have taken reasonable care unless they should reasonably have known that the information was incorrect. For example, a real property valuation prepared by a qualified valuer or an estimate of historical building cost made by a quantity surveyor are matters that are likely to be outside the range of professional expertise of a tax agent. Relying in good faith on advice

of this nature is consistent with the taking of reasonable care even though the advice later proves to be deficient.

Likelihood that a statement is false or misleading

95. The likelihood of the risk that a statement is false or misleading is a relevant factor in deciding whether reasonable care has been exercised in making a statement to the Commissioner.
96. A failure to respond to every foreseeable risk will not necessarily mean that reasonable care is absent. In each case the seriousness of the risk must be weighed against the cost of guarding against it. For example, where there is a remote risk that the accounting systems leave open the possibility of a minor error, but the risk is not addressed because the cost would be unaffordable, reasonable care is still likely to be shown.

Relevance of the size of the tax shortfall amount

97. The size of a shortfall or the proportion of a shortfall to the overall tax payable, arising from making a false or misleading statement, are indicators pointing to the magnitude of the risk involved in making the statement. A person dealing with a matter that involves a substantial amount of tax or involves a large proportion of the overall tax payable will be required to exercise a higher standard of care because the consequences of error or misjudgment are greater. However, all the individual circumstances leading up to the making of the false or misleading statement are to be weighed up in deciding whether reasonable care has been taken.

Gross carelessness/ Recklessness

Meaning of recklessness as to the operation of a tax law

98. Whilst the offence is gross carelessness in taking a tax position, the Commissioner considers that the words gross carelessness and recklessness are interchangeable in this context. Recklessness implies conduct that is more blameworthy than a failure to take reasonable care to comply with a tax law but is less blameworthy than an intentional disregard of a tax law. The scheme of the uniform penalties regime is to impose the higher penalty in response to conduct that goes beyond mere carelessness or inadvertence by displaying a high degree of carelessness, namely gross. Where gross means great, such that it is a conscious decision of carelessness.

99. Like the test for determining whether reasonable care has been shown, a finding of recklessness or gross carelessness depends on the application of an essentially objective test. There must be the presence of conduct that falls short of the standard of a reasonable person in the position of the person. Similar to the position with a failure to take reasonable care, dishonesty is not an element of establishing gross carelessness. The actual intention of the taxpayer is of no relevance.
100. Behaviour will indicate gross carelessness where it falls significantly short of the standard of care expected of a reasonable person in the same circumstances as the person. Although the test for determining whether gross carelessness is shown is the same as that applied for testing a lack of reasonable care, it is the extent or degree to which the conduct of the person falls below that required of a reasonable person that highlights a finding of gross carelessness.
101. Recklessness assumes that the behaviour in question shows disregard of or indifference to a risk that is foreseeable by a reasonable person. The Courts have said that:
- “Recklessness in this context means to include in a tax statement material upon which the Act or regulations are to operate, knowing that there is a real, as opposed to a very unlikely risk that the material may be incorrect, or be grossly indifferent as to whether or not the material is true and correct, and a reasonable person in the position of the statement-maker would see there was a real risk that the Act and regulations may not operate correctly to lead to the assessment of the proper tax payable because of the content of the tax statement. So understood the conduct is more than mere negligence and must amount to gross carelessness.”
102. Recklessness is gross carelessness - the doing of something which in fact involves a risk, whether the doer realises it or not; and the risk being such having regard to all the circumstances, that the taking of that risk would be described as 'reckless'. The likelihood or otherwise that damage will follow is one element to be considered, not whether the doer of the act actually realised the likelihood. The extent of the damage which is likely to follow is another element.
103. The degree of the risk and the gravity of the consequences need to be weighed in forming a conclusion about whether conduct is reckless. If the risk

is slight and the damage which will follow if things go wrong is small, it may not be reckless, however unjustified the doing of the act may be. If the risk is great, and the probable damage great, recklessness may readily be a fair description, however much the doer may regard the action as justified and reasonable. Each case has to be viewed on its own particular facts and not by reference to any formula.

Gross Carelessness Recklessness

104. The Courts in Australia have long recognised that the ordinary meaning of recklessness involves something more than mere inadvertence or carelessness. A person will have behaved recklessly if their conduct clearly shows disregard of, or indifference to, consequences or risks that are reasonably foreseeable as being a likely result of the person's actions. In other words, recklessness involves the running of what a reasonable person would regard as an unjustifiable risk.
105. The Commissioner considers that a person would be acting recklessly if:
- (a) the person did an act which created a risk of a particular consequence occurring (for example, a tax shortfall), and
 - (b) a reasonable person who, having regard to the particular circumstances of the person, knew or ought to have known the facts and circumstances surrounding the act would have or ought to have been able to foresee the probable consequences of the act, and
 - (c) the risk would have been foreseen by a reasonable person as being great, having regard to the likelihood that the consequences would occur, and the likely extent of those consequences (for example, the size of the tax shortfall), or
 - (d) when the person did the act, he or she either was indifferent to the possibility of there being any such risk, or recognised that there was such risk involved and had, nonetheless, gone on to do it. That is, the person's conduct clearly shows disregard of, or indifference to, consequences foreseeable by a reasonable person.

106. A finding of dishonesty is not essential to a finding of recklessness. It is sufficient that the person's behaviour objectively displayed a high degree of carelessness and indifference to the consequences.
107. In some circumstances, an incorrect estimate may be due to reckless behaviour of the person. For example, in the context of making a reasonable estimate of its turnover, an estimate will be considered to have been made recklessly where the person fails to consider most of the relevant factors that are likely to materially affect its estimate of the turnover.

Intentional Disregard of a tax law

Meaning of intentional disregard of a tax law

108. Section 122 provides that a person is liable to pay the prescribed penalty if:
- (a) the taxpayer takes a tax position that is not a reasonably arguable position in disregard of a clear obligation under a tax law; and
 - (b) the taxpayer does so with the dominant intention of reducing or removing a tax liability or obtaining a tax benefit; and
 - (c) the tax position results in a tax shortfall.
109. The adjective 'intentional' means that something more than reckless disregard of or indifference to a tax law is required.
110. Unlike the objective test which applies to determine whether there has been a want of reasonable care or recklessness, the test for intentional disregard is purely subjective in nature. The actual intention of the taxpayer is a critical element.
111. Intentional disregard means that there must be actual knowledge that the statement made is false. To establish intentional disregard, the person must understand the effect of the relevant legislation and how it operates in respect of the person's affairs and make a deliberate choice to ignore the law.
112. Dishonesty is a requisite feature of behaviour that shows an intentional disregard for the operation of the law. This is another significant difference between this type of behaviour and behaviour that shows a lack of reasonable care or recklessness where dishonesty is not an element.

113. Evidence of intention must be found through direct evidence or by inference from all the surrounding circumstances, including the conduct of the person.
114. A mere failure to follow the Commissioner's view contained in a private ruling is not evidence of intentional disregard. However, if a person ignores an unfavourable private ruling on a matter where the law is clearly established, that may constitute intentional disregard.
115. Intentional disregard of the law can be inferred from the facts and surrounding circumstances. Intentional disregard is also more than just disregard for the consequences or reckless disregard. The facts must show that a person consciously decided to disregard clear obligations under a tax law, of which the person was aware. For example, the production of false records will amount to an intentional disregard of a tax law.
116. A person does not intentionally disregard an obligation by taking a view that differs from the Commissioner's view, provided the view is not frivolous or unfounded. If a person obtains an unfavourable ruling on a settled area of a law and they disregard the ruling without having an alternative view that is reasonably arguable, this may constitute intentional disregard because the law which formed the basis of the ruling is clear and has been explained to the person.
117. Intentional disregard of a tax law or regulations may be determined on the basis of direct evidence, or by inference from the surrounding circumstances.

Assessment of administrative penalty

118. Under section 123 of the Act the Commissioner may impose an administrative penalty in accordance with the section and in doing so, must not impose an administrative penalty that exceeds the prescribed maximum penalty amount for the administrative penalty
119. The Minister has prescribed maximum penalties for the administrative penalties in the Tax Administration Regulations 2022 Gazetted on 1st November 2022. Attached at Appendix 2 is an extract of Legal Notice No. 257 Regulation 11.
120. 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 under section 123 of the Act adopt an approach to the

penalties based on culpability and not charge the maximum penalty in every case.

121. Rather, the Commissioner will take into account the seriousness of the behaviour. (See PR 2024/4)

Remission of administrative penalty

122. The Act provides in section 124 that the Commissioner may remit part or all of an administrative penalty imposed under section 123 either on:

- the Commissioner's own initiative; or
- the application in writing of the person assessed for the penalty under section 123.

123. The grounds for a remission of the penalty are set out in section 124 as the following:

- (a) serious hardship to the person subject to the penalty, such as financial misfortune, health or impacts of natural disaster;
- (b) the incorrect imposition or calculation of a penalty;
- (c) circumstances that the person subject to the penalty cannot change or influence, such as such as serious illness or absence from the country;
- (d) an honest unintentional failure to pay unpaid tax by the person subject to the penalty, such as being unaware of the tax owing because the person did not receive the notice;
- (e) any other prescribed ground.

(See PR 2024/4 for examples of when the Commissioner will remit Administrative penalty)

DATE OF EFFECT

124. This Ruling applies to years of income commencing both before and after its date of issue. This Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the final Ruling.

Joseph Dokekana
Commissioner Inland Revenue
Date: 31st May 2024

APPENDIX 1 EXAMPLES

No	Example	Application of Ruling
Statement of fact and Law		
1	Solomon Trading Company has claimed a deduction in its return that is not in the accounts that it says qualifies as a deduction.	Solomon Trading Company has made a statement of mixed fact and law because it claimed it had incurred expenditure (an alleged fact) and that it is entitled to a deduction for that expenditure (to be decided under law).
False or misleading in a material particular		
2	Paul, a sole trader, claimed a deduction for car expenses based on a faulty odometer. Apart from this error he had kept an accurate logbook of all travel.	The claim is an incorrect statement, even if he was unaware that the odometer was faulty. It is “in a material particular” if the deduction is substantial and Paul received a much higher deduction than he was entitled to, say 10% more.
3	JKK (SI) Trading Ltd requested an amendment to its income tax assessment to claim a deduction for sponsorship. In its request it failed to disclose that a material advantage (upgrade to business class) accrued to the Managing Director in return for making the sponsorship.	The taxpayer has made a false statement even though it actually made the payment. The taxpayer failed to disclose a material fact which would affect its entitlement to a deduction. An amount paid does not meet the definition of sponsorship if some benefit is received for the payment.
4	Company X understated in its return the amount of gross interest it derived for the year. The omission of an amount of interest resulted in the company's taxable income being understated for the income year.	The understatement of gross interest is a material particular because it reduced the amount of income tax that was assessed to be payable.

Person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular.		
5	<p>Stephen is a 54-year-old farmer who always prepares his own income tax return.</p> <p>A few months prior to lodging his last return he suffered a stroke.</p> <p>In the period of his rehabilitation, he was unable to attend to any paperwork or correspondence. During that period, he misplaced one of several interest statements sent to him by his bank.</p> <p>At the time of preparing his return Stephen was still catching up on the backlog of paperwork and had still not fully recovered.</p> <p>As a result, he returned interest of \$49,750 rather than the correct amount of \$50,000.</p>	<p>Stephen's illness and incapacity are relevant factors for determining whether he had knowledge or could reasonably be expected to have knowledge. So too are the facts that one of many bank statements was misplaced and the amount of the understated interest was relatively small in comparison to the total interest derived, such that the amount actually returned did not seem unusually small.</p> <p>It is likely that a reasonable person in Stephen's circumstances who was making a genuine effort to comply with his or her tax obligations could have omitted the amount. As a result, Stephen could be considered to not have knowledge or not be reasonably expected to have knowledge that the statement was false or misleading in a material particular.</p>
6	<p>Alistair is a 60-year-old farmer who manages his own tax affairs. For the past eighteen months, he has been busy with his business and voluntary community work and has not given much attention to his own paperwork. As a result, he misplaced one of two interest statements sent to him by his bank for the last income year. At the time of preparing his income tax return, Alistair did not check his interest statements for the year. As a result, he returned interest of \$6,000 rather than the correct amount of \$12,000.</p>	<p>Alistair's busy schedule is not a factor which can help to establish he has knowledge or could reasonably be expected to have knowledge that the statement was not false or misleading in a material particular, because generally a reasonable person would organise their business and private obligations so sufficient time and effort can be devoted to their tax affairs. His age is also an irrelevant factor, because it does not impede his ability to conduct his daily affairs. The fact that Alistair misplaced one of only two statements and omitted half of his interest income is relevant because it is likely that a reasonable person in Alistair's</p>

		<p>circumstances would have noticed that one statement was missing and a substantial amount of the total interest had been omitted. As a result, Alistair would be considered to have knowledge or reasonably expected to have that knowledge that the statement was false or misleading in a material particular.</p>
7	<p>Company XYZ (SI) operates a small business. In its return for the last income year the company disclosed assessable income of \$500,000. However, an administrative error resulted in \$100,000 of assessable income being omitted.</p>	<p>It is reasonable to conclude that the company should have been aware that all its income had not been returned given the relatively large amount that was omitted. This is regardless of whether or not the person used an agent to complete the return. In the absence of other factors which indicate that the person does not have knowledge or reasonably expected to have that knowledge (for example, adequate procedures in place which were reasonably designed to prevent such errors from occurring) the person would be considered to have knowledge or reasonably expected to have that knowledge in this case that the statement was false or misleading in a material particular.</p>
8	<p>Company SI Ltd returns assessable income of \$50,000,000 for the last income year but omits assessable income of \$100,000.</p>	<p>Subject to consideration of the circumstances that led to the error, the relative size of the omission does not, of itself, support a conclusion that the company is considered to have knowledge or reasonably expected to have that knowledge that the statement was false or misleading in a material particular. The size of the error in relation to the total assessable income (0.02% of assessable income) may mean that the company, despite the error, still is not be considered to have knowledge</p>

		or reasonably expected to have that knowledge that the statement was false or misleading in a material particular in the preparation of its tax return.
9	An employee of a small business makes an error of \$10,000 in transferring figures from working papers to the Goods Tax return. The owner of the business was aware that the same employee had made a number of similar transposition errors in previous Goods Tax returns, but the owner took no action.	In this case it could be concluded that a reasonable person in the business owner's circumstances would have foreseen a risk and put simple checks in place that would at least reduce the risk of obvious errors. Therefore, in respect of the shortfall which resulted from the \$10,000 error, the person would be liable for false and misleading statement penalty as they could be considered to have knowledge or reasonably expected to have that knowledge in making a statement that was false or misleading in a material particular.
Reporting Tax Obligations		
10	Mrs. and Mr. H are both public servants who earn \$67,000 and \$35,000 respectively. They own a rental property as joint tenants and are not carrying on a rental property business. Their tenant did not deduct withholding tax. So, Mrs. H for the year of income ended 30 June 2022 prepared an individual return and the property returned a rental loss of \$2,000. This loss was claimed in full by Mrs. H who prepared her own return but did not read any instructions. Her only reason for claiming the whole of the loss was that she was not aware that she could not personally claim the entire loss, and that the overall tax outcome was more favourable if the loss was claimed by the person in the higher tax bracket.	Mrs. H may be considered to have knowledge or reasonably expected to have that knowledge because a reasonable person in her circumstances would have read instructions.

Using an Agent		
11	<p>Sarah, who owns a company in the business of renting investment units, engaged a registered tax agent to prepare her income tax return for the previous income year. Sarah provided paperwork to the agent showing that during the income year the external walls of one unit of the unit block were rendered and that her share of the cost was \$70,000. She informed the agent that the external walls of the building had previously been plain brick. The agent claimed the \$70,000 as a repair.</p>	<p>A competent registered tax agent with this knowledge would have characterised the expense as a capital improvement and claimed a wear and tear deduction rather than an outright deduction.</p> <p>Although the agent made the false claim the taxpayer is still penalised.</p>
12	<p>John engaged a registered tax agent to prepare his income tax return for the previous income year. In discussions prior to preparing the return John informed the registered tax agent that a building he owed had been sold during the year of income. The agent does not ask John whether the building had ever been used for income producing purposes and does not include the amount of the sale price above the written down value in John's assessable income.</p>	<p>A registered tax agent exercising reasonable knowledge would have asked for this additional information.</p> <p>Although the agent made the false claim the taxpayer is still penalised.</p>
Circumstance of ill health - reasonable care taken		
13	<p>Helen has been diagnosed with cancer and has had emergency surgery and intensive chemotherapy treatment. In preparing her tax return she overlooked a relatively small amount of interest earned on one of her investment accounts. While recovering from surgery and during her treatment she misplaced the relevant statement from the financial institution.</p>	<p>It is a reasonable conclusion that Helen's illness has contributed to her failure to correctly record interest earned during the income year. An appropriate conclusion is that a reasonable person in the same circumstances might not be as thorough or as organised in keeping records as a person who was not dealing with significant health issues. Taking her personal circumstances into account it is reasonable to conclude that Helen has exercised reasonable care.</p>

Personal circumstances do not support reasonable care		
14	Richard is a professional musician. Because of his touring commitments he has spent roughly one week in every four away from home. When not on tour, he has had a full schedule of rehearsals and has also been making arrangements for his wedding. He has not had time to organise his tax records and has overlooked interest of \$10,000 earned on one of his investment accounts. He explains that he forgot to include the interest because he had been too busy to devote time to organising his tax records and had misplaced the particular statement from the financial institution.	Although Richard has a busy professional and personal life, these are not special circumstances that warrant the application of a lower standard of care in meeting his tax obligations. These circumstances do not impair or compromise his capacity to comply with his taxation obligations. A reasonable person in Richard's circumstances would be expected to devote sufficient time to record keeping so assessable income is accurately returned.
Frivolous interpretative position - reasonable care not shown		
15	Felix, a businessperson who is registered for Sales Tax, buys a restaurant. He sells beer for takeaway from his premises. He is uncertain about whether he should charge sales tax on the beer sales and asks his nephew who is a second-year law student for advice. Based on the advice he does not charge sales tax.	Felix has not acted reasonably in relying on the advice of an unqualified person. Had he checked with Inland Revenue or consulted Inland Revenue publications he would have been informed that sales tax is chargeable on restaurant services as defined.
Small business - record keeping reasonable care shown		
16	Mabel and Fergus run a fish and chip stall in Kukum. They are registered for Sales Tax and keep basic accounts for the business from which they prepare their monthly Sales Tax returns. Mabel prepares the return which is later checked by Fergus. During an Inland Revenue audit a minor shortfall amount is identified for a tax period. The discrepancy is due to a transposition error.	Mabel and Fergus have exercised reasonable care because the record-keeping system and procedures for checking the accuracy of their Sales Tax returns are appropriate and adequate given the size and nature of their business operations.

Large business - record keeping reasonable care not shown		
17	An employee of a large manufacturing company makes an error of \$100,000 in transferring figures from the accounts to a Goods Tax return. The chief accountant is aware that this employee has made similar transposition errors in preparing previous Goods Tax returns. Despite this knowledge, no steps were taken to put checks in place that would guard against the repetition of such a mistake.	The failure to implement appropriate procedures means that the company has not exercised reasonable care. This example also highlights that employers are responsible for the acts of their employees provided the acts are within the acts authorised for that employee. Therefore, if an employee fails to meet the reasonable care standard, the employer is liable for the failure. This is so whether the employer is a natural person or not. The only difference is that a non-natural person employer must act through agents and employees as it is incapable of acting otherwise.
Relying on third party information - failure to take reasonable care		
18	Felicity owns a small dress shop, and she has a bookkeeper to prepare monthly statements of sales and outgoings and the bookkeeper deposits the net proceeds into Felicity's bank account. One statement has a typographical error which shows a net amount of \$1,000 instead of the correct amount of \$10,000. The correct amount has been deposited into the account.	Felicity did not check the statement and includes the incorrect monthly amount when she works out her sales income. A reasonable person would have had grounds to suspect that the amount recorded on the statement was wrong because it was significantly less than the other monthly statements. This could have been verified by cross-checking the statement against the bank statement. A reasonable person in the same circumstances would have been more diligent than Felicity in ensuring that the correct amount of sales income was returned. Felicity has failed to exercise reasonable care.
Relatively large shortfall amount - reasonable care not shown		
19	During the income year Atticus had two separate types of income: <ul style="list-style-type: none"> • dividends; and 	Given that the amount of the omission represents 25% of Atticus's total assessable income, it would be

	<ul style="list-style-type: none"> • employment income. <p>When he prepares his tax return, he shows the \$40,000 income from the employment income but forgets to include the \$14,000 from dividends received.</p>	<p>expected that a reasonable person would not have forgotten to return the income. The omission is also obvious because a reasonable person would have been prompted to query that dividends are income. Atticus has not exercised reasonable care.</p>
Relatively small shortfall amount - reasonable care shown		
20	<p>A large company returns assessable income of \$4 million but because of a single transposition error it omits an additional \$20,000. The omission was caused by inadvertent human error and not by a failure in the reporting systems or procedures.</p>	<p>In contrast to example 19, the amount of the omission represents 1% of assessable income a very small proportion of the total assessable income. In these circumstances and given the relative size of the omission, the company has acted with reasonable care despite the error. If it was \$200,000 5% of assessable income, reasonable care would not be shown.</p>
Gross Carelessness/Recklessness		
21	<p>Company XYZ (SI) which carries on a small business, was subject to a record keeping audit. At the end of the audit Inland Revenue advised the company about the areas where the records were inadequate and what was required to remedy the situation. The company was advised that it was likely that the correct amount of taxable income would be returned if the suggested improvements of IRD to the company's record-keeping practices were implemented in full. Rather than following the advice, the business made minor changes to their record-keeping system which did not improve the adequacy of their records.</p>	<p>Two years later the business was subject to an income tax audit. A shortfall amount was detected which was caused by inadequate record keeping. The facts indicate that the shortfall amount was caused by the company's gross carelessness.</p>

Intentional disregard of a tax law		
22	Company XYZ, in preparing its tax return, failed to include interest earned on funds held in an account that was opened in a false name.	It can be inferred that the company acted intentionally in omitting the interest from its return. It is also a possible fraud case.
23	Pauline is not certain whether an amount she received during the year is assessable income and therefore chose not to include that amount in her income tax return. She did not take any steps to ascertain if the amount was assessable, such as making enquiries with IRD.	In failing to include the amount, she has not intentionally disregarded a tax law. However, the action may constitute failure to exercise reasonable care or recklessness.
24	Peter, an accountant, receives payment for his services by way of cash, cheque and credit. In his Sales Tax return, Peter reports a Sales Tax net amount on the basis that the Sales Tax payable is calculated on the credit card and cheque receipts only, and not the cash transactions.	In the absence of a reasonable explanation for the omission it can be inferred that Peter has acted intentionally in omitting to calculate Sales Tax on services for which cash was received. As a professional person, this behaviour amounts to willful deceit and deception and is more than intentional disregard. Omission of all cash receipts is tax evasion.

Appendix 2

Maximum prescribed penalties for administrative penalties

- (1) The maximum prescribed penalty that may be imposed for an administrative penalty for breach of the section of the Act specified in Column 1 of the Table is specified in Column 3 of the Table.
- (2) The maximum prescribed penalty that may be imposed for an administrative penalty for each day that the breach of the section of the Act specified in Column 1 of the Table continues is specified in Column 4 of the Table.

TABLE
MAXIMUM PRESCRIBED PENALTIES

<i>Column 1 Section breached</i>	<i>Column 2 Description of breach</i>	<i>Column 3 Maximum administrative penalty for breach</i>	<i>Column 4 Additional maximum administrative penalty for continuing breach</i>
114	Failure to keep and maintain records	10,000 penalty units	20 penalty units for each day that the breach continues
115	Failure to apply for TIN	5,000 penalty units	20 penalty units for each day that breach continues
116	Failure to update TIN information	5,000 penalty units	20 penalty units for each day that breach continues
117	Failure to display tax agent certificate	5,000 penalty units	NIL
118	Late filing	5,000 penalty units	20 penalty units for each day that breach continues
119	False or misleading statement	10,000 penalty units or (if a tax shortfall occurs) the amount of the shortfall, whichever is higher	NIL

<i>Column 1 Section breached</i>	<i>Column 2 Description of breach</i>	<i>Column 3 Maximum administrative penalty for breach</i>	<i>Column 4 Additional maximum administrative penalty for continuing breach</i>
120	Failure to take reasonable care	10,000 penalty units or (if a tax shortfall occurs) the amount of the shortfall, whichever is higher	NIL
121	Gross carelessness	10,000 penalty units or (if a tax shortfall occurs) the amount of the shortfall, whichever is higher	NIL
122	Intentional disregard	10,000 penalty units or (if a tax shortfall occurs) the amount of the shortfall, whichever is higher	NIL

Note: The Commissioner considers that only one "penalty" will apply, in situations of section 119 to 122 breaches, either the 10,000 penalty units or the shortfall amount "penalty". The penalty would be the shortfall amount where the shortfall amount is greater than the 10,000 penalty units. Otherwise, it would be the 10,000 penalty units.