

## Public Ruling

### **PR 2024/4 Commissioner's guidelines as to when he or she will reduce penalties from the maximum prescribed amount based on culpability and remission of administrative penalties**

<b>LEGALLY BINDING SECTION:</b>	Paragraph
<b>What this Ruling is about</b>	1
<b>Background</b>	2
<b>Ruling</b>	6
Assessment of administrative penalty	
Principles to consider in the reduction of penalties	9
Remission of administrative penalty	16
<b>Date of effect</b>	18
APPENDIX 1 – Prescribed Penalties	19
<b>ADMINISTRATIVELY BINDING SECTION</b>	
APPENDIX 2 – Examples	20

**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 provides guidelines on how the Commissioner's power in section 123 of 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 should be exercised and to help ensure that taxpayers receive consistent treatment.

## ***Background***

2. The administrative penalty regime contained in the Act applies from 1<sup>st</sup> January 2023 to all taxes administrated by the Commissioner, and delegated officers of the Inland Revenue Division (IRD) from time to time.
3. The regime sets out uniform administrative penalties that apply to persons that fail to satisfy certain obligations under the tax laws covered by the Act.
4. Division 3 of Part 8 of the Act imposes penalties for:
  - 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.
5. This Ruling 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.

## **RULING**

### ***Assessment of administrative penalty***

6. 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.
7. The Minister has prescribed maximum penalties for the administrative penalties in the Tax Administration Regulations 2022 gazetted on 1<sup>st</sup> November 2022. Attached at Appendix 1 is an extract of Legal Notice No. 257 Regulation 11.
8. 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 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***

9. 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.

10. 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.

11. 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 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.

12. The Commissioner's officers will consider reducing the following level of penalties from the maximum prescribed penalties based on culpability as in the table below:

<b>Behaviour of the taxpayer</b>	<b>Level of reduction from maximum Penalty amount</b>	<b>Assessment of Penalty amount</b>
<b>Worst type of behaviour</b> 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.	0%	100%
<b>Behaviour of the taxpayer</b>	<b>Level of reduction from maximum Penalty amount</b>	<b>Assessment of Penalty amount</b>
<b>Highest level of behaviour which breaches the tax law</b>  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.  <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.	25%	75%
<b>Medium level of behaviour</b>  A taxpayer's actions demonstrate gross carelessness, showing a disregard or indifference to their obligations or a taxpayer makes a false and misleading statement.	50%	50%
<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	75%	25%
<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	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>		
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13. 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.
14. 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.
15. 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**

16. The Act provides in section 124 that the Commissioner may remit part or all of an administrative penalty imposed under section 123 either on:
  - on the Commissioner's own initiative; or
  - on the application in writing of the person assessed for the penalty under section 123.

17. The grounds for a remission of the penalty are set out in section 124 and summarised in the following table below:

	<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.

## **DATE OF EFFECT**

18. 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: xx May 2024



## APPENDIX 1

### 19. 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**

<b>Column 1 Section breached</b>	<b>Column 2 Description of breach</b>	<b>Column 3 Maximum administrative penalty for breach</b>	<b>Column 4 Additional maximum administrative penalty for continuing breach</b>
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

<b>Column 1 Section breached</b>	<b>Column 2 Description of breach</b>	<b>Column 3 Maximum administrative penalty for breach</b>	<b>Column 4 Additional maximum administrative penalty for continuing breach</b>
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.

On 1 January 2023 a penalty unit was equal to \$1.00, under section 50A of the Interpretation and General Provisions Act Cap 85, but this amount is expected to increase in future.

**APPENDIX 2**  
**20. Examples**

No	Example	Application of Ruling
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-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	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.
3	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 totaling \$1,000 are not recorded and Taxpayer C forgets to tell her tax agent when the tax return is being prepared.	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.