

**Standard Practice Statement**

Please quote reference: SPS 15/XX

**Student Loans – relief from repayment obligations**  
**Introduction**

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

This standard practice statement **sets out Inland Revenue’s practice** for providing relief<sup>1</sup> **under the Student Loan Scheme Act 2011 (the “Act”)**. In particular, it covers relief from payments for:

- overdue student loan repayment obligations;
- student loan repayment obligations not yet due;
- student loan repayment deductions for the current tax year; and
- penalty<sup>2</sup> and late payment interest imposed on overdue student loan repayment obligations.

**Application for relief**

Borrowers are encouraged to contact Inland Revenue at the earliest opportunity if they think that they may have trouble meeting their repayment obligations on time, so that options for payment, which may include an instalment arrangement, can be discussed.<sup>3</sup>

An application for relief should set out the borrower’s circumstances, and clearly explain the reason for requesting hardship relief. The Commissioner may ask the borrower to provide further information in support of their application.

Applications can be made by telephone, in writing or by electronic means using the IR website on-line service. Each application will be considered on its own merits.

NZ resident borrowers may use the IR590 *Disclosure of financial position* form as a guide to the information required in support of their application for hardship relief.

---

<sup>1</sup> The reference to “relief” for the purposes of this statement is referring to the overall relief provisions contained in Subpart 2 of the Act. This includes “hardship relief” in section 147 of the Act. The reference to “serious hardship” in this statement is in relation to section 147(1)(a) of the Act, where hardship relief may be granted on the basis of serious hardship.

<sup>2</sup> The reference to “penalty” in this statement refers to penalties defined in section 146A of the Act and does not include abusive tax position penalties or evasion or similar act penalties as per sections 141D and 141 E of the Tax Administration Act 1994.

<sup>3</sup> If a student loan borrower also has a tax debt or a child support debt, they should refer to SPS 15/XX *Instalment arrangements for payment of tax* or SPS 15/XX *Child Support Debt – Requesting an instalment arrangement*.

Overseas-based borrowers are required to apply for hardship relief in writing and provide full details of their financial situation. They can complete an IR219 for negotiating current year obligations, and a IR590 with supporting information is required for loans in default. ***Student loan overseas-based repayment application***, form and post it to the address on the IR219.

## **Reviewing a decision**

If a taxpayer is concerned that their circumstances have not been given proper consideration they should raise their concern with the officer handling their request and ask for the decision to be reviewed.

If a taxpayer is still not satisfied with the level of service they receive, they can obtain more information about the Inland Revenue Complaints Management Service at <http://www.ird.govt.nz/how-to/disputes/findout-disputes-cmplts-mgmt-svc.html> or phone 0800 274 138 Monday to Friday between 8am and 5pm.

## **STANDARD PRACTICE Summary**

1. **This statement sets out Inland Revenue’s practice for providing relief under the Act.** A student loan borrower should contact Inland Revenue at the earliest opportunity if they seek:
  - relief from late payment interest;
  - relief from a repayment obligation (whether the amount is not yet due or is an amount for the current tax year);
  - relief from a penalty; and/or
  - to enter into an instalment arrangement for an amount that is unpaid or an amount not yet due.
2. Applications are generally not required by any specific time. However an **application for anticipated hardship for future year’s obligations must be received** by Inland Revenue on or before 31 March in the current tax year.
3. An application will be considered on the basis of a borrower’s **current or future** ability to meet their student loan repayment obligation. In considering an application, the Commissioner will look at all options available to a borrower to enable them to meet their loan repayment obligations.
4. A NZ resident borrower may apply in writing, by telephone, or any other manner acceptable to the Commissioner. An overseas-based borrower is required to apply in writing, **or complete an IR219 “Student loan overseas-based repayment application” form.**
5. When providing relief, the Commissioner may:
  - refrain from issuing a notice of assessment, collecting and writing off any student loan repayment obligation if the amount in any tax year is \$20 or less;
  - refrain from the collection of any student loan repayment obligation payable, if the due date for payment has passed and the amount is more than \$20 but less than \$334 (excluding late payment interest). The amount not collected will be added back to the loan balance;

- reduce any amount that must be deducted or paid by a borrower for the current tax year, or the next tax year. The amount not collected as a consequence, will be added back to the loan balance;
  - reduce a repayment obligation for the previous tax year - the amount not collected will be added back to the loan balance;
  - agree to an instalment arrangement to repay an unpaid amount, or an amount that is not yet due, in a manner acceptable to the Commissioner. The amount not collected will be added back to the loan balance; and/or
  - refund any amount deducted or paid to meet a student loan repayment obligation in the previous tax year where the Commissioner is satisfied the repayment has, or would, cause serious hardship to a borrower or there are other special reasons that would make it fair and reasonable to make a refund.
6. A borrower can apply for the cancellation or remission of a penalty and late payment interest imposed on any student loan repayment obligation. The Commissioner will look at the circumstances of each case and, if the Commissioner thinks it equitable, may grant relief.
  7. A borrower will need to show why payment of their loan repayment obligation will cause them serious hardship, or show why they think relief should be given for some other special reason.
  8. If the Commissioner is satisfied that meeting a repayment obligation will cause serious hardship to a borrower or there are special reasons that make it fair and reasonable to provide relief, the Commissioner may:
    - refund<sup>4</sup> any amount that had been deducted or paid that is considered more than a borrower should have been expected to pay without causing hardship; and/or
    - reduce the amount that must be deducted or paid, to enable the borrower to meet their adjusted repayment obligation.
  9. When a borrower complies with an agreed instalment arrangement, the Commissioner will reduce the late payment interest rate on the unpaid amount for each month that an instalment arrangement applies. The rate of the late payment interest rate and the reduction varies each year depending on the student loan interest rate.
  10. The unpaid balance of the original student loan repayment obligation not recovered as a result of providing hardship relief remains as part of the loan.
  11. When the Commissioner agrees to provide relief, the terms and details of the adjusted student loan repayment obligation and other matters (e.g. refunds, changed tax code for PAYE purposes) will be confirmed.
  12. A borrower who is granted relief must advise the Commissioner as soon as possible of any change to their circumstances and the change is likely to impact the decision to have provided relief.
  13. The Commissioner may review any decision to grant relief if it is considered there has been a material change in the circumstances upon which the relief had been

---

<sup>4</sup> However, any overpayment of a loan repayment obligation for years prior to the year preceding the current year, are not refundable to the borrower and will be offset against the student loan balance (see section 122(2)).

agreed. Upon review, all or part of the repayment deduction or repayment obligation may be reinstated by the Commissioner.

### Detailed discussion

14. Sections 144 and 145 of the Act allows a student loan borrower to apply to the Commissioner for:

- relief from late payment interest;
- relief from a penalty;
- hardship relief from a repayment obligation for any prior, current or the next tax year; and
- financial relief by entering into an instalment arrangement.

#### **Relief from late payment interest and penalties - Sections 146 and 146A**

15. A penalty and late payment interest may be imposed if a borrower does not meet their student loan repayment obligations in full and on-time. Late payment interest will also compound monthly until the arrears are paid.

16. **Upon application, and having regard to the borrower's circumstances**, the Commissioner can cancel some or all of the late payment interest if it would be equitable to do so. **The borrower's consolidated loan balance will be reduced by the amount that has been cancelled.**

17. The Commissioner will consider an application for the cancellation of penalty and late payment interest once the initial arrears have been paid.

18. The Commissioner will cancel a penalty and late payment interest when such action is regarded as equitable after looking at the reasons for late payment. For example, penalty and late payment interest may be cancelled when a payment default was:

- the result of a genuine error;
- **beyond the control of the borrower or the borrower's agent; or**
- any other situation in which the Commissioner considers it is equitable to do so.

19. When considering an application to cancel a penalty and late payment interest, the **Commissioner will take into account the borrower's previous loan repayment record, including whether they have paid their student loan repayment obligations as soon as practicable. The borrower's overall loan compliance history will also be a factor in deciding whether or not to cancel late payment interest.**

20. If the late payment interest was added to an unpaid amount that is \$334 or more, then the unpaid amount will be reduced by the amount of the cancelled late payment interest.

#### **Hardship relief from a repayment obligation - Section 147**

21. Under section 147 of the Act **a student loan borrower's repayment obligation may be reduced for any period the Commissioner considers equitable, if the Commissioner is satisfied that the repayment of the obligation would cause serious hardship to the borrower or if there are other special reasons that make it fair and reasonable to do so.**

## **Reducing a repayment obligation**

22. A student loan repayment obligation is generally calculated by taking the **borrower's income** (that exceeds the repayment threshold) and multiplying it by the repayment percentage to establish the amount of the student loan to be repaid for a pay period or tax year for other income.

### ***Salary and wage earners***

23. If a borrower is a salary and wage earner, their repayment obligation is determined on a pay period basis. If the Commissioner grants hardship relief the borrower will be issued with a special repayment deduction rate certificate that varies the deduction rate for a current or future year to reflect a reduced pay period repayment obligation.
24. The borrower will need to give the certificate to their employer so that the employer can deduct student loan repayment deductions at a reduced rate.
25. The amount not collected as a consequence of a reduction of a current year repayment obligation, will remain on the loan balance.

### ***Income from other sources***

26. If a borrower receives income from other sources (other than salary or wages, or in addition to their salary and wages), their repayment obligation is the amount of their student loan repayable determined on their adjusted net income for a particular tax year.
27. If the Commissioner grants hardship relief the percentage payable by the borrower (for receiving income that is not subject to PAYE) will be reduced.
28. The amount not collected as a consequence of a reduction, will be added back to the loan balance.

### ***Overseas based borrowers***

29. For an overseas based borrower, consideration will be given to see if they are entitled to a repayment holiday or an opt-out period from their repayment obligations.

### ***Hardship relief: serious hardship or other special reasons***

30. Applications for hardship relief are considered on a case-by-case basis. The onus is on the borrower to show that payment of their student loan obligations will come under one of the two limbs of section 147. That is repaying the full amount of the student loan repayment obligation has or will cause either serious hardship, or that there are other special reasons why the Commissioner should not pursue full payment for a period.
31. If the Commissioner is satisfied meeting a repayment obligation will cause serious hardship to a borrower or there are special reasons that make it fair and reasonable to provide relief, the Commissioner may:

- refund<sup>5</sup> any amount that was deducted or paid that is considered more than a borrower is able to afford to pay without causing hardship; and/or
- reduce any amount that must be deducted, or paid, to enable the borrower to meet their adjusted repayment obligation.

### ***Serious hardship relief - Section 147(1)(a)***

32. Subsection 147(1)(a) provides that the Commissioner may grant relief from a repayment obligation if payment is causing, or would cause serious hardship to the borrower.
33. The Act does not provide a definition of "serious hardship". However section 154 (applications for instalment arrangement) of the Act does refer to section 177A of the Tax Administration Act 1994 (**the "TAA"**), which provides what considerations should be taken into account when applying the serious hardship provisions in the TAA.
34. Section 177A of the TAA sets out a list (although not exhaustive) of circumstances that would indicate a taxpayer is experiencing significant financial hardship because of:
- a serious illness suffered by the taxpayer or the taxpayer's dependant(s); or
  - **the taxpayer's inability to meet:**
    - minimum living expenses according to normal community standards; or
    - the cost of medical treatment for an illness or injury of the taxpayer or **the taxpayer's dependant(s); or**
    - the cost of education for **the taxpayer's dependant(s).**
35. The Commissioner may also take into account other factors that may be relevant in determining whether a taxpayer may be experiencing significant hardship.
36. The Commissioner is only permitted to respond to current applications for serious hardship relief and not to anticipate situations related to **a borrower's** personal living circumstances and the ability to pay a student loan obligation in the future.

### ***Other special reasons for relief***

37. Subsection 147(1)(b) provides for the Commissioner to grant relief from a **repayment obligation, if the Commissioner considers that there are "other special reasons" that make it fair and reasonable to do so.**
38. Providing relief from payment because a borrower is experiencing a situation which they perceive as unfair or unreasonable, is not a sufficient reason to provide relief **under the "other special reason"** relief without first asking how the unfair or unreasonable situation, lead to hardship.
39. Consideration of what is fair and reasonable should have regard to the perception of other borrowers who are meeting their repayment obligations.

---

<sup>5</sup> However, any overpayment of a loan repayment obligation for years prior to the year preceding the current year, are not refundable to the borrower and will be offset against the student loan balance (see section 122(2)).

## ***Examples of relief under "serious hardship" and "other reasons"***

### ***Example One***

Relief is likely under "serious hardship" where a borrower's incapacity impacts on their earnings to the extent they will be unable to meet minimum living expenses. Similarly, a borrower is unable to meet their repayment obligations due to the costs of medical treatment necessary to sustain their health. Alternatively, where a borrower is not able to attend to their loan obligation but is incapacitated due to illness, even though they have sufficient funds to make payment, but there is no-one available to help them while they were incapacitated, may apply for relief under the other special reasons provision.

### ***Example Two***

A borrower is impacted by a nationally recognised adverse event, or a declared state of emergency. If they believe they will not be able to comply with their repayment obligation by a due date, borrowers are encouraged to contact Inland Revenue to discuss their circumstances as soon as they are able after an event. When the Commissioner is satisfied that a borrower has been directly impacted and, as a consequence, is not able to comply with their repayment obligation, relief may be provided under the other "special reasons" provision. However if the adverse event **did not directly impact on the borrower's** ability to meet their repayment obligation (for example **the borrower's loan information was stored at a property that was not impacted by the adverse event**), then the **Commissioner is unlikely to provide relief under the "other special reasons"** provision.

### ***Example Three***

Relief is unlikely under the "other special reasons" limb where a borrower has access to savings, but these savings have been earmarked for a deposit on a house. In considering whether such a situation would be unfair, the Commissioner will have regard to other borrowers who have met their repayment obligations, particularly by those borrowers who had to use savings that were earmarked for other purposes to meet their repayment obligations.

## ***Reviewing hardship relief (serious hardship or other special reasons) due to changes in circumstances***

40. Under section 152 of the Act, the borrower is obligated to notify the Commissioner if there is a change in their circumstances, including whether any information given to the Commissioner that is no longer correct or may be inaccurate, or there is a change that may affect whether or not hardship relief will continue to be granted.
41. The Commissioner may also review hardship relief, under section 153 of the Act, if **a borrower's circumstances have materially changed from** that when the relief was granted, and reverse the effects of the hardship relief in full or part.

## **Relief from small amounts - Section 144**

42. In relation to small amounts owed, the Commissioner:
  - will refrain from issuing a notice of assessment or collecting and writing off any student loan repayment obligation, if the amount in any tax year is less than \$20; or
  - if the amount is \$20 or more but less than \$334 (excluding late payment interest), the Commissioner may refrain from the collection of any student loan repayment obligation if the due date for payment has passed.

43. The amount not collected in either circumstance will be added back to the loan balance and where applicable will accrue interest.

### **Relief by entering into an instalment arrangement - Section 154**

44. The Commissioner may also agree to an instalment arrangement where a borrower can demonstrate that they will experience hardship if they are required to pay their repayment obligation in full, but can make partial payment of the repayment obligation. The Commissioner is only able to enter into an instalment arrangement to the extent that it does not place the borrower into serious hardship.

45. The Act imposes no time limit on when an instalment arrangement must be completed. However, the Commissioner considers that instalment arrangements should be for as short a period of time as possible without causing serious hardship to a borrower.

### ***Late payment interest***

46. If an instalment arrangement is in place the amount of late payment interest is reduced as they meet the terms of that arrangement. As noted above borrowers are encouraged to contact Inland Revenue early so that relief options can be discussed, particularly as late payment interest is charged on defaulted repayment obligations. Early contact may minimise late payment interest charged on any amount that remains unpaid after the due date for payment.

47. When a borrower complies with an agreed instalment arrangement, a lower late payment interest rate will apply to the unpaid amount for each month that an instalment arrangement applies. The rate of the late payment interest rate and the reduction varies each year depending on the student loan interest rate.

### ***Considerations the Commissioner takes into account***

48. Where it is apparent a borrower is able to pay overdue repayment obligations immediately, the Commissioner will not enter into an arrangement. For example, if the borrower has access to investment funds, beneficial interests, shareholder current accounts or trusts. The Commissioner expects those funds will be used to pay the overdue repayment obligation. A decision on this factor will be based on the financial information provided by a borrower and any further enquiries the Commissioner considers necessary.

49. The Commissioner will look at all options available for collection of unpaid repayment obligations when considering a request for an instalment arrangement. Additional options may include requesting that the borrower sells property or arranges other finance to pay their unpaid repayment obligations more promptly.

50. The Commissioner will consider whether a borrower can reasonably afford the proposed rate of payment without it causing serious hardship. If a proposed instalment arrangement would cause hardship that is, the borrower is likely to have difficulty maintaining normal living standards, the Commissioner will decline an application, but will make a counter-offer based on what is considered **appropriate for a borrower's circumstance.**

51. Where the Commissioner is likely to recover more through an instalment arrangement than from a bankruptcy action, an instalment arrangement will generally be entered into.



### *Terms of the instalment arrangement*

52. When the Commissioner enters into an instalment arrangement, the terms will be confirmed with the borrower to ensure that both parties clearly understand their obligations. Confirmation will usually be made using the same method of communication that a borrower used for their application. However, for more complex cases it will be preferable to issue a letter which sets out the obligations and agreed terms for future reference by the borrower.
53. A borrower may renegotiate an instalment arrangement at any time. However, the Commissioner may only do so after two years have elapsed from the date the instalment arrangement was entered into.

### *Misleading or false information*

54. The Commissioner may cancel an instalment arrangement if a borrower has provided false or misleading information, or a borrower is not meeting their obligations under an instalment arrangement.

### **Significant over-payments**

55. When payments by a borrower exceed their repayment obligation, the excess payment will be offset against any other student loan amounts that are due but remain unpaid. Any remaining over-payment will then be offset against the **borrower's loan balance**.
56. NZ resident borrowers can request that a significant over-repayment be refunded directly to them **within six months from the date of issue of the Commissioner's** notice advising of the excess payment, or day after the end of the tax year to which the excess payment relates, whichever is the latest date.
57. Overseas based borrowers can request that an over-payment be refunded directly to them within six months of their final instalment date.
58. Alternatively, borrowers may also choose to apply all or part of an excess payment to satisfy a future repayment obligation.

**Student Loan Scheme Act 2011**

**122 Exception to general rule if repayment obligations for prior tax years reassessed**

- (1) Subsection (2) applies if, upon investigation by the Commissioner of a borrower's repayment obligations for 2 or more prior tax years (the **investigated years**),—
  - (a) the Commissioner assesses the borrower as having a repayment obligation for an investigated year for which no assessment has been made previously, or alters an assessment for an investigated year so as to increase the repayment obligation; and
  - (b) the Commissioner also identifies that an excess repayment has been made for an investigated year.
- (2) If this subsection applies,—
  - (a) the Commissioner may, to the extent that he or she considers equitable, offset the excess repayment against any repayment obligation due for any of the investigated years; and
  - (b) sections 120 and 121 apply only to so much of the excess repayment (if any) as is not offset against a repayment obligation in accordance with paragraph (a).
- (3) Subsection (2) applies despite anything to the contrary in this Act.

**141 Late payment interest reduced if instalment arrangement complied with**

- (1) This section applies if—
  - (a) a borrower is liable to pay late payment interest on an unpaid amount under section 139; and
  - (b) the borrower has entered into an instalment arrangement in relation to the unpaid amount in accordance with section 154.
- (2) For each month that the borrower meets his or her obligations under the instalment arrangement, any late payment interest that the borrower is liable to pay on the unpaid amount for that month must be calculated as if, in the definition of late payment interest rate in section 139(3), the reference to base interest rate plus 4% were a reference to base interest rate plus 2%.
- (3) However, subsection (2) applies only to the days in a month during which an instalment arrangement applies.

**144 Power of Commissioner in relation to small amounts**

- (1) The Commissioner may refrain from—
  - (a) issuing a notice of assessment in relation to a repayment obligation that is payable by a borrower for a tax year if the amount payable is less than \$20; or
  - (b) *[Repealed]*
  - (c) collecting a repayment obligation (or part of a repayment obligation) that is payable by a borrower for a tax year if the amount payable is less than \$20; or
  - (d) *[Repealed]*
  - (e) collecting, and may write-off, any amount that is payable by an employer or PAYE intermediary for any period under this Act if the amount payable is \$20 or less.
- (2) The Commissioner may refrain from collecting payment of a repayment obligation (or part of a repayment obligation) if that repayment obligation (or part of a repayment obligation)—
  - (a) is \$20 or more but less than \$334; and
  - (b) has not been paid by the due date (as that term is defined in section 5(2)).
- (3) Any amount that the Commissioner refrains from collecting—
  - (a) under subsection (1)(c) is written off:
  - (b) under subsection (2) is not written off, and is added to the borrower's loan balance.

(4) This section applies despite anything to the contrary in this Act.

#### **145 Application for different types of relief for borrower**

- (1) A borrower, or a person on a borrower's behalf, may apply for 1 or more of the following:
- (a) relief from late payment interest (see section 146):
  - (ab) relief from a penalty (see section 146A):
  - (b) hardship relief for the current tax year, any prior tax year, or the next tax year (see section 147):
  - (c) financial relief by entry into an instalment arrangement (see section 154).
- (2) An application under subsection (1)(a) must be made by notifying the Commissioner in a manner acceptable to the Commissioner.
- (3) An application under subsection (1)(b)—
- (a) must be made by notifying the Commissioner in a manner acceptable to the Commissioner:
  - (b) that relates to hardship relief for the next tax year must be made on or before 31 March in the tax year that immediately precedes the tax year for which relief is sought.
- (4) An application under subsection (1)(c) must be made in accordance with section 154(1).

#### **146 Commissioner may grant relief from late payment interest**

- (1) Subsection (2) applies—
- (a) if a borrower has been charged with late payment interest; and
  - (b) regardless of whether that late payment interest has been paid, either in whole or in part; and
  - (c) if an application is made under section 145(1)(a) for relief from late payment interest.
- (2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the late payment interest as the Commissioner considers equitable.
- (3) If late payment interest is cancelled,—
- (a) the borrower's consolidated loan balance is decreased by the amount of the cancelled late payment interest; and
  - (b) if the late payment interest has been added to the borrower's unpaid amount under section 139 (whether calculated at the full late payment interest rate in accordance with section 139(2) or the reduced late payment interest rate in accordance with section 141), the **borrower's unpaid amount** is decreased by the amount of the cancelled late payment interest; and
  - (c) any payment made in excess of the remaining amount of late payment interest payable (if any) by the borrower (an **excess payment**) must be offset against the borrower's consolidated loan balance as follows:
    - (i) first, against any unpaid amount; and
    - (ii) secondly, against the loan balance; and
  - (d) the Commissioner must refund any remaining excess payment to the borrower (see sections 199 and 200).

#### **146A Commissioner may grant relief from penalties**

- (1) Subsection (2) applies—
- (a) if a borrower has been charged with a penalty; and
  - (b) regardless of whether that penalty has been paid, either in whole or in part; and
  - (c) if an application is made under section 145(1)(ab).

- (2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the penalty as the Commissioner considers equitable.
- (3) For the purposes of this section, **penalty—**
  - (a) means—
    - (i) a late filing penalty;
    - (ii) an underestimation penalty;
    - (iii) a student loan shortfall penalty; but
  - (b) despite paragraph (a)(iii), does not include a student loan shortfall penalty where, for the purposes of the application of section 159 (as set out in section 158), the shortfall penalty for which the borrower was liable was imposed under section 141D or 141E of the Tax Administration Act 1994.”

**147 Hardship relief for any tax year**

- (1) If an application is made under section 145(1)(b) for hardship relief, the Commissioner may, for any period the Commissioner considers equitable, decrease a borrower's repayment obligation if the Commissioner—
  - (a) is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower; or
  - (b) considers that there are other special reasons that make it fair and reasonable to do so.
- (2) However, the Commissioner must not—
  - (a) refund any amount that was deducted or paid to meet a repayment obligation for a tax year prior to the current tax year other than the tax year that immediately precedes the current tax year; or
  - (b) decrease a repayment obligation if—
    - (i) a student loan shortfall penalty has been imposed on a borrower under section 159 in relation to the tax year that the repayment obligation relates to; and
    - (ii) for the purposes of the application of section 159 (as set out in section 158), the shortfall penalty for which the borrower was liable was imposed under section 141D or 141E of the Tax Administration Act 1994.

**148 Special deduction rate certificate for hardship relief**

- (1) Subsection (2) applies if—
  - (a) the Commissioner decreases the repayment obligation of a borrower under section 147; and
  - (b) the borrower derives salary or wages.
- (2) The Commissioner may issue a special deduction rate certificate that—
  - (a) specifies a special deduction rate and the repayment code to be used that reflects the Commissioner's decision under section 147; and
  - (b) specifies the period for which the special deduction rate is to apply to the borrower; and
  - (c) requires the borrower's employer or PAYE intermediary to make deductions from the borrower's salary or wages at the special deduction rate.
- (3) The issue of a special deduction rate certificate may form part of or all of the means by which a borrower's repayment obligation is decreased under section 147.

**149 Issue and application of special deduction rate certificate**

- (1) If the Commissioner issues a special deduction rate certificate under section 148, the Commissioner must give a copy of the certificate to the borrower.

- 2) The special deduction rate certificate revokes all other special deduction rate certificates previously issued in relation to the borrower under section 45 or 148.

**150 Time when special deduction rate ceases to apply**

The special deduction rate applies until the earlier of—

- (a) the end of the period specified in the special deduction rate certificate; or
- (b) the date on which the Commissioner notifies the employer in writing otherwise; or
- (c) the date on which the borrower notifies the employer otherwise.

**151 Effect of Commissioner's decision under section 147**

An amount that, as a result of a decision under section 147, the Commissioner refunds to, or does not collect from, a borrower—

- (a) is not written off; and
- (b) remains part of the borrower's loan balance; and
- (b) is not an unpaid amount.

**152 Borrowers must notify Commissioner of change of circumstances**

A borrower who applies for hardship relief under section 145(1)(b) must notify the Commissioner, and provide details, as soon as practicable if there is a change in the borrower's circumstances that—

- (a) means that any information supplied to the Commissioner under section 145 is incorrect or inaccurate; or
- (b) may affect whether or not a borrower would have been, or will continue to be, granted hardship relief under section 147.

**153 Commissioner may review grant of hardship relief**

- (1) The Commissioner may review any decision he or she made to grant hardship relief to a borrower.
- (2) If for any reason the Commissioner considers that the circumstances for the grant of that hardship relief have changed, the Commissioner may do either or both of the following:
  - (a) require the borrower to take any action that is required to reverse the effects of the hardship relief that was granted to the borrower;
  - (b) reinstate all or part of the repayment obligation that would have applied to the borrower if hardship relief had not been granted to the borrower, and require payment of any amount that would have been due during the relevant tax year.

**154 Application for instalment arrangement**

- (1) An application for entry into an instalment arrangement—
  - (a) may be made at any time in relation to an unpaid amount or an amount that is not yet due; and
  - (b) must be made in accordance with section 177(1)(b) of the Tax Administration Act 1994.
- (2) Sections 177(1)(b) and (3) to (5), 177A, 177B, and 177CA of the Tax Administration Act 1994 apply to an application under subsection (1) and to an instalment arrangement granted as a result of that application, as far as applicable and with all necessary modifications, as if—
  - (a) every reference to a taxpayer included a borrower; and
  - (b) every reference to tax included an unpaid amount.

## **Tax Administration Act 1994**

### **177 Taxpayer may apply for financial relief**

- (1) A taxpayer, or a person on a taxpayer's behalf, applies for financial relief by either—
  - (a) making a claim stating why recovery of the taxpayer's outstanding tax or a relief company's outstanding tax would place the taxpayer, being a natural person, in serious hardship; or
  - (b) requesting to enter into an instalment arrangement with the Commissioner by telephone or in writing.
- (1B) For the purposes of this section, the Commissioner must consider the taxpayer's financial position at the date on which the application for financial relief is made.
- (2) The Commissioner may require a taxpayer, or a person on a taxpayer's behalf, to apply for financial relief under subsection (1)(a) by notice.
- (3) Upon receiving a request, the Commissioner may—
  - (a) accept the taxpayer's request; or
  - (b) seek further information from the taxpayer; or
  - (c) make a counter offer; or
  - (d) decline the taxpayer's request.
- (4) A taxpayer has 20 working days, or a longer period allowed by the Commissioner, to provide the information sought or to respond to a counter offer.
- (5) If the Commissioner receives information or a response from a taxpayer outside the time period allowed under subsection (4), the receipt of the information or the response will be treated as a new request for financial relief.

### **177A How to apply serious hardship provisions**

- (1) Subsections (2), (3), and (4) provide the rules for the Commissioner to decide (the decision) whether,—
  - (a) for the purposes of section 176, recovery of outstanding tax would place a taxpayer, being a natural person, in serious hardship:
  - (b) for the purposes of section 177, the Commissioner may accept the taxpayer's request for financial relief on the basis of a claim that recovery of the taxpayer's outstanding tax or a relief company's outstanding tax would place the taxpayer, being a natural person, in serious hardship:
  - (c) for the purposes of section 177B, an instalment arrangement entered into by a taxpayer or a relief company would place the taxpayer, being a natural person, in serious hardship:
  - (d) for the purposes of section 177C, recovery of the outstanding tax would place the taxpayer, being a natural person, in serious hardship.
- (2) The Commissioner makes a decision under this section by determining whether financial information, after allowing for payment of a relevant amount of outstanding tax, and subject to subsections (3) and (4), shows that the taxpayer would, after the application under section 177 (the application), likely have significant financial difficulties because, after the application,—
  - (a) the taxpayer or their dependant has a serious illness:
  - (b) the taxpayer would likely be unable to meet—
    - (i) minimum living expenses estimated according to normal community standards of cost and quality:
    - (ii) the cost of medical treatment for an illness or injury of the taxpayer, or of their dependant:
    - (iii) the cost of education for their dependant:
  - (c) other factors that the Commissioner thinks relevant would likely arise.

- (3) Compliance with, and non-compliance with, tax obligations must not be considered by the Commissioner when making a decision under this section.
- (4) The Commissioner must use only financial information that the Commissioner has at the date on which the decision is made.

### **177B Instalment arrangements**

- (1) The Commissioner must not enter into an instalment arrangement with a taxpayer or a relief company to the extent that the arrangement would place the taxpayer, being a natural person, in serious hardship.
- (2) The Commissioner may decline to enter into an instalment arrangement if—
  - (a) to do so would not maximise the recovery of outstanding tax from the taxpayer; or
  - (b) the Commissioner considers that the taxpayer is in a position to pay all of the outstanding tax immediately; or
  - (c) the taxpayer is being frivolous or vexatious; or
  - (d) the taxpayer has not met their obligations under a previous instalment arrangement.
- (3) A taxpayer may renegotiate an instalment arrangement at any time.
- (4) The Commissioner may renegotiate an instalment arrangement at any time after the end of 2 years from the date on which the instalment arrangement was entered.
- (5) The renegotiation of an instalment arrangement is treated as if it were a new request for financial relief.
- (6) The Commissioner may cancel an instalment arrangement if—
  - (a) it was entered into on the basis of false or misleading information provided by the taxpayer; or
  - (b) the taxpayer is not meeting their obligations under the arrangement.
- (7) Despite sections LA 6(2) and LH 2(6) of the Income Tax Act 2007, a taxpayer with an instalment arrangement who is meeting their obligations under it may choose to have an amount of refundable tax credit remaining for a tax year paid to them rather than used under the ordering rules set out in those sections.

### **177C Write-off of tax by Commissioner**

- (1) The Commissioner may write off outstanding tax that cannot be recovered.
- (1BA) The Commissioner may use, as a ground for deciding whether or not to write off the outstanding tax of a taxpayer or of a relief company, the basis that recovery of the outstanding tax would place the taxpayer, being a natural person, in serious hardship. The Commissioner is not required to write off the outstanding tax if the ground exists.
- (1B) The Commissioner may write off an amount of outstanding tax to the extent to which the amount—
  - (a) is outstanding from the 2008–09 tax year; and
  - (b) is tax payable under section MF 5(2) or MF 6(2) of the Income Tax Act 2007, or is otherwise the result of WFF tax credit overpayment or overcrediting; and
  - (c) is outstanding due to amendments to the family scheme made by the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008.
- (1C) The Commissioner must write off an amount, not exceeding \$100, of outstanding tax to the extent to which the amount—
  - (a) is outstanding from the 2008–09 tax year; and
  - (b) is tax payable under section MF 5(2) or MF 6(2) of the Income Tax Act 2007, or is otherwise the result of WFF tax credit overpayment or overcrediting.
- (1D) The Commissioner must write off an amount, not exceeding \$30, of outstanding tax to the extent to which the amount—

- (a) is outstanding from the 2010–11 tax year; and
  - (b) is tax payable under section MF 5(2) or MF 6(2) of the Income Tax Act 2007, or is otherwise the result of WFF tax credit overpayment or overcrediting.
- (2) The Commissioner must write off outstanding tax that cannot be recovered in the following situations:
- (a) bankruptcy;
  - (b) liquidation;
  - (c) **a taxpayer's estate has been distributed.**
- (3) Despite subsection (1), the Commissioner must not write off outstanding tax (inclusive of any shortfall penalties), if a taxpayer is liable to pay, in relation to the outstanding tax, a shortfall penalty for an abusive tax position or evasion or a similar act.
- (4) Despite subsection (2), the Commissioner may reinstate all or part of the outstanding tax written off if the Commissioner receives, by operation of law, additional funds in respect of a taxpayer after the taxpayer becomes bankrupt, **is liquidated or if additional funds due to the taxpayer's estate are discovered after the taxpayer's estate has been distributed.**
- (5) If the Commissioner writes off outstanding tax for a taxpayer who has a tax loss, the Commissioner **must extinguish all or part of the taxpayer's tax loss, by—**
- (a) dividing the amount written off by 0.33 and reducing the tax loss by that amount, if the taxpayer is not a company; or
  - (b) dividing the amount written off by 0.28 and reducing the tax loss by that amount, if the taxpayer is a company.
- (5B) If the Commissioner writes off outstanding tax for a taxpayer who has a tax credit carried forward under section LE 3 of the Income Tax Act 2007, the Commissioner must extinguish an amount of the tax credit on a one-for-one basis.
- (5C) If a taxpayer has both a tax loss to which subsection (5) applies and a tax credit to which subsection (5B) applies, the Commissioner must extinguish the tax loss before extinguishing the tax credit.
- (6) For the purpose of subsection (5), the tax loss that may be extinguished is the tax loss of the taxpayer at the time at which the outstanding tax is written off and the Commissioner may use a figure for that tax loss based on the most recent return of income furnished by the taxpayer.
- (7) The Commissioner may reverse a write-off if—
- (a) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off is a natural person who—
    - (i) declares bankruptcy within a year of the outstanding tax being written off; or
    - (ii) is subject to bankruptcy proceedings brought by a creditor within a year of the outstanding tax being written off; or
  - (b) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off is a relief company which, within a year of the outstanding tax being written off, is, or is in the course of being, liquidated; or
  - (c) the outstanding tax was written off due to false or misleading information provided by the taxpayer.
- (8) If the Commissioner enters into an instalment arrangement that provides for some outstanding tax to be written off, the Commissioner may not reverse the write-off even if, during the term of the **instalment arrangement, the taxpayer does not meet the instalment arrangement's terms.**