



Taxation Circular  
**TC 2014/1**

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**Internal Revenue Commission - Tax Circular**

***Taxation Circular TC 2014/1: Imposition and remission of Late Lodgement Penalties (LLP) and Late Payment Penalties (LPP)***

**SUBJECT**

This Circular will explain;

- How and why statutory penalties are imposed for late lodgement and late payment under the Income Tax Act 1959 (“the Act”) and the Goods and Services Tax Act 2003 (“the GST ACT”);
- The Commissioner General’s powers to remit additional statutory charges for late lodgement and late payment; and
- The circumstances when those additional charges will be remitted.
- The relevant provisions of the more common taxing statutes imposing additional charges for late lodgement and late payment and providing a discretion for the Commissioner General to remit those charges are:

<b>Late Lodgement Penalties</b>			
<b>Tax Type</b>	<b>Penalty Provision</b>	<b>Penalty</b>	<b>Remission Provision</b>
Income Tax	s316(1) of the Act	The greater of: 100% of tax assessable; or K100 per month	s316(3) of the Act
GST	s95A(1) of the GST Act	K100 per month	s95A(2) of the GST Act

<b>Late Payment Penalties</b>			
<b>Tax Type</b>	<b>Penalty Provision</b>	<b>Penalty</b>	<b>Remission Provision</b>
Income Tax & Provisional Tax	s262(1) of the Act	20% p.a. on the amount unpaid	s262(2) of the Act
Management fee withholding tax	s196T(3) of the Act	20% p.a. on the amount unpaid	s196T(4) of the Act
Dividend withholding tax	s311E(4)(b) of the Act	20% p.a. on the amount unpaid	s311E(5) of the Act
Interest withholding tax	s312AE(5) of the Act	20% p.a. on the amount unpaid	s312AE(6) of the Act
Foreign Contractor withholding tax	s196F(6) of the Act	20% p.a. on the amount unpaid	s196F(7) of the Act
Royalty Tax (non-resident)	s357(9) of the Act	20% p.a. on the amount unpaid	s357(10) of the Act
Advance payment Tax – mining and petroleum companies	s311AW(1) of the Act	20% p.a. on the amount unpaid	s311AW(2) of the Act
Salary & wages tax	s299G(8)(b) of the Act	20% flat of the principal amount (“the relevant penalty amount”) plus 20% p.a. of the principal amount and the relevant penalty amount of the amount that remains unpaid	s299G(8) of the Act
Business income & Prescribed Royalties Payments	s284(1)(b) of the Act	20% flat of the principal amount (“the relevant penalty amount”) plus 20% p.a. of the principal amount and the relevant penalty amount of the amount that remains unpaid	s284(2) of the Act s284(3) of the Act
GST	s85(1) of the GST Act	10% flat of the unpaid tax plus 20% p.a. of the amount that remains unpaid	s85(4) of the GST Act

## IMPOSITION OF PENALTIES

1. Taxpayers have a responsibility to meet their lodgement and payment obligations as and when they fall due. In this regard revenue collections are contingent on timely lodgement. This is to ensure that withholding amounts can be reconciled in a timely manner; that advantages are not gained by delaying lodgement; and that the Internal Revenue Commission (IRC) has sufficient information to manage compliance risks.
2. The automatic imposition of additional charges for late lodgement and late payment is a response, by way of legislation, to encourage both lodgement and payment by the due date. The Act has included such provisions since inception.
3. Where the due date falls on a weekend or a public holiday the penalty will be calculated from the next business day.
4. The additional charges automatically imposed by legislation are intended to encourage compliance with future obligations and liabilities. They are intended to deny late lodgers/payers any advantage over those who do lodge and pay on time. The knowledge that additional charges are accruing should encourage taxpayers to organise their affairs in such a way as to enable them to lodge and pay on time.
5. The additional penalty per annum component operates both as a deterrent to discourage non-compliant behaviour and to compensate for the time value of funds during the period the amounts were unpaid. More importantly it is intended to discourage the National revenue being misused as the “financier of choice”.
6. Furthermore, the community expects the law to be administered in such a way so that those who do not report and pay on time are not advantaged over those who do. This is the reasoning for having penalties set at higher rates than are available in the market. These penalties are simply avoided by taxpayers lodging and paying on time.
7. It is the law, not the Commissioner General, that imposes additional charges (penalties) in all cases and the Commissioner General must take steps to recover those charges, even after a primary debt is finalised. However, the law acknowledges that situations exist where it may be fair and reasonable for the additional charges to be remitted either in full or in part. This discretion rests with the Commissioner General.

## REMISSION OF PENALTIES

### General Principles

8. A taxpayer has a right to request a remission of additional charges. Where the Commissioner General is satisfied that a remission of these charges is warranted, they will be remitted, either in full or in part. The onus is on the taxpayer to demonstrate that remission is warranted.
9. A decision by the Commissioner General to remit a penalty on the grounds that it is fair and reasonable must be considered in view of the legislative intent that entities should be liable to a penalty if they lodge or pay late.
10. Remission of penalty may be granted where the delay in lodgement or payment occurred due to circumstances beyond the control of the taxpayer. Where circumstances are not beyond the entity's control, it may still be appropriate for the Commissioner General to remit the penalty, in full or in part, where it would be fair and reasonable to do so.
11. A taxpayer will need to demonstrate that it is fair and reasonable to remit the penalty, having regard to the nature of the specific event or decision that prevented lodgement or payment. In considering any remission of penalty, it is also necessary to consider what steps were taken by the taxpayer, if any, to relieve the effects of the circumstances causing the late payment.
12. For example, general statements such as adverse business conditions affecting an industry, general economic downturn or fluctuations of currency exchange rates would not be considered a basis for remission.
13. However, a more compelling argument for remission might be the sudden collapse of a financial institution where the majority of the taxpayer's funds were held on deposit with the institution.
14. A decision to remit a penalty must be both fair and equitable to the taxpayer concerned and the broader community. An entity that habitually lodges or pays late or fails to lodge or pay will not be given any advantage over those taxpayers who value integrity, honesty and the benefits of citizenship by organising their affairs to ensure they can lodge and pay on time.
15. For example, it would generally be considered fair to remit the penalty, at least in part, where a taxpayer has a good long standing compliance history.

16. In this respect it is recognised by the Commissioner General that the full imposition of both late lodgement penalties and any flat additional tax component of late payments penalties should only be maintained in respect of the most recalcitrant taxpayers. In relation to these penalties or components of these penalties the Commissioner General will adopt a remission policy reflective of the varying degree of non compliance and which encourages taxpayers to meet their tax obligations.
17. It would be inappropriate to exercise the discretion to remit additional charges for the following reasons:
- as an inducement to encourage payment of debts;
  - as an inducement to finalise a disputed assessment; or
  - to finalise a case where the IRC has not attempted to collect additional charges.
18. In deciding whether to remit a penalty the Commissioner General will have regard to:
- i. the overall compliance history of the taxpayer (if the taxpayer can demonstrate that they generally lodge and pay on time and they have no history of audit activity then partial remission may be more favourably considered);
  - ii. the nature of the tax type involved (remission of LLP or LPP in regard to withholding taxes would require a more compelling set of circumstances than income tax);
  - iii. the effort taken by the IRC to obtain lodgement or payment (if lodgement or payment is only as a result of IRC activity then remission would be highly unlikely);
  - iv. the value of the information required or the quantum of the debt outstanding;
  - v. whether the entity has had an opportunity to comply (where delay in lodgement or payment is beyond the control of the taxpayer then penalties may be remitted in full);
  - vi. the nature of any contact the entity, or their registered tax agent, may have had with the IRC prior to the due date for lodgment/payment and any subsequent interactions;

- vii. the length of time the assessment/payment was overdue (this might be indicative as to the efforts the taxpayer made to mitigate the circumstances for the non lodgment or non-payment) ; and
- viii. the likelihood that application of the penalty will diminish the likelihood of improved behaviour.

19. None of these factors can be considered in isolation but rather must be considered jointly in relation to all the particular facts and circumstances of the particular case. The application of the above principles can be exemplified through the following scenarios:

Scenario 1

Facts:

A taxpayer has multiple months of Salary or Wage tax deductions outstanding but is lodging and paying consistently late. Penalties are applied as each month's late payment is received. The taxpayer requested remission stating that due to their remote location and general cash flow difficulties they are unable to pay by the due date.

Remission consideration:

No remission would be allowed in these circumstances. Given the monies being withheld from their employees' salaries are held in trust to be remitted to the IRC, it is not the employer's funds for him to use as he likes. Cash flow difficulties in such circumstances are insufficient reason for remission. The taxpayer has made no attempt to make one large catch up payment but rather continues to pay each month late. This is indicative that they are making no attempt to change their behavior. They have provided no evidence of attempts to mitigate the problem such as obtaining finance from other sources so that they can meet their tax obligations as and when they fall due. In relation to the argument that they are in a remote location they have not explained why alternative payment measures such as electronic payment cannot overcome this or made estimate payments in advance of the lodgment date as a means of mitigating the late payment amount.

Scenario 2

Facts:

A taxpayer has multiple months of Salary or Wage tax deductions outstanding and voluntarily comes forward with all their outstanding months' deductions and makes a single catch up payment. Total significant penalties are calculated and applied. The taxpayer requests remission of all penalties citing earlier difficulties in making regular payments due to their remote location, staff shortages which meant they fell behind in their record keeping and general business pressure's which prioritized their tax compliance. They also state that such a large penalty would cause them financial hardship. They give an undertaking to ensure that all future amounts will be paid on time.

Remission consideration:

Full or partial remission of the 20% "relevant penalty amount" might be justified in this case. The extent of the remission of this part of the total penalty would need to be considered in relation to the extent that the quantum of the overall penalty would have on the business as

a going concern and the extent of benefit they have gained over other complying taxpayers. However, no remission should be made in relation to the 20% per annum component of the penalty without evidence of compelling and exceptional reasons. The fact that the taxpayer has voluntarily made an effort to get current with lodgment and payment of all outstanding group tax obligations, and on the assumption that no other lodgments or payments are outstanding, would indicate that he is making an effort to change his compliance behavior and may justify some degree of remission. Where a substantial amount has been outstanding for some time then the total penalties can become a significant financial burden to the entity to the extent that it becomes detrimental to its ongoing viability and future compliance. This is a factor which would be taken into consideration when considering the extent of any remission.

#### Scenario 3

##### Facts:

A taxpayer has multiple months of Salary or Wage tax deductions outstanding and voluntarily comes forward with all their outstanding months' deductions and makes a single catch up payment. Total significant penalties are calculated and applied. The taxpayer requests remission of all penalties. Their particular circumstances are that they applied for a TIN and group tax registration some months earlier but only recently had their registration confirmed. The IRC stated that they could not accept payment until such time as they were registered.

##### Remission consideration:

Remission of all penalties should be granted. Where the late lodgment and/or late payment are beyond the control of the taxpayer then all penalties should be remitted. Similar circumstances might arise where entities are unable to be registered with IPA in a timely manner and subsequently are delayed in being registered for tax purposes. Alternatively, a natural disaster may have resulted in the taxpayer not being able to meet his obligations through no fault of his own.

#### Scenario 4

##### Facts:

A taxpayer, after reviewing their income tax return which was lodged and assessed some 4 years earlier realises that they have failed to withhold interest withholding tax on an amount of interest paid to an overseas entity which was claimed as a full deduction. He subsequently remits the appropriate amount to the IRC and requests remission of penalty on the basis that this was a genuine oversight which he has voluntarily disclosed. He is not aware of any compliance activity being contemplated in relation to the specific entity, or any compliance project targeting the industry or interest withholding.

##### Remission consideration:

Partial remission in such circumstance may be warranted. If the non-remittance was unlikely to be picked up by normal compliance activity, that is, the taxpayer is genuinely coming forward and voluntarily disclosing information the IRC would not otherwise have obtained we would not want to unnecessarily penalise in such a way as to deter such behavior. The level of remission would need to be balanced with the loss of the revenue to the State. One would also need to consider the relationship between the lender and borrower and any

other commercial or economic benefit sought as well as the taxpayer's broader compliance history.

#### Scenario 5

##### Facts:

A taxpayer, suffering short term cash flow difficulties, advises the IRC of his current Salary or Wage remittance amount. That is, he lodges on time, and requests to enter into a payment arrangement paying half on time and the balance 2 weeks later. He also requests that the Commissioner General remit all penalties.

##### Remission consideration:

Full or partial remission of the relevant penalty amount may be appropriate in such circumstances. The taxpayer has demonstrated that he is attempting to meet his lodgement and payment obligations and has taken steps to mitigate the consequences of his late payment. Remission of the relevant penalty amount in such circumstances encourages taxpayers to at least acknowledge the amount owed to the IRC and to proactively address the situation.

#### Scenario 6

##### Facts:

A taxpayer lodges his GST return for the month of June on the 21<sup>st</sup> July. It is a credit balance on which he expects a refund. He subsequently lodges his July group tax return on the 7<sup>th</sup> of August with instructions to offset the amount outstanding with his GST credit. The IRC fails to make the offset until the credit is verified some time later. The IRC then raises penalties. The taxpayer lodges a remission request on the basis that the penalties have been inappropriately raised as there was never a debt on which the penalty could accrue.

##### Remission consideration:

All penalties will be remitted. As the taxpayer has requested that his pre-existing GST credit be utilized to offset his Salary or Wage liability then the penalties should have never been imposed as no debt liability arises. However, if the GST credit is later found to be excessive and is reduced by the Commissioner General, in full or in part, then the IRC would take the view that the credit was at no time available to be have been used as an offset as it never existed. The group tax liability would therefore be reinstated to the extent that no offset took place and full penalties would accrue from the original due date until the balance outstanding is paid in full. It would only be in exceptional circumstances that this later penalty amount would be remitted to any degree.

#### Scenario 7

##### Facts:

A taxpayer lodges his income tax return some 6 months late. Late lodgement penalties are applied and he subsequently makes a written request for remission. He explains that heavy rains in the area caused a mudslide which destroyed the office in which his records and accounts were kept. He has had to reconstruct his accounts from what could be salvaged and by requesting copies of invoices from suppliers and clients. He also requests that we enter a payment arrangement with him as he will be unable to pay his tax in full by the due date.



**Remission consideration:**

Where such facts are established to the Commissioner General's satisfaction then late lodgement penalties should be remitted in full and a suitable payment arrangement agreed to with full remission of late payment penalties for the period during which the taxpayer was directly impacted by the natural disaster. The taxpayer has a compelling reason as to why he is unable to meet his lodgement and payment obligations as they fall due. The circumstances which give rise to his non-compliance are beyond his control and he has taken all possible steps to mitigate the effect of those circumstances. In such cases the IRC would support and assist the taxpayer in his endeavors to re-establish his business as a going concern. Any further remission would be subject to the taxpayer's adherence to the payment arrangement and his ongoing good compliance behavior.

## Late Lodgement Penalty (LLP)

20. Section 316(1) of the Act states:

*Notwithstanding anything contained in Section 313, 314 or 315, a taxpayer who fails duly to furnish as and when required by this Act or the regulations, or by the Commissioner General, a return or any information in relation to a matter affecting either his liability to tax or the amount of the tax, is liable to pay as additional tax or penalty an amount equal to the tax assessable to him or the amount of K100.00 for each complete calendar month or part of a month calculated in respect of the period commencing on the last day that return or information was due to be furnished and ending on the day on which that return or information is furnished, whichever is the greater.*

Similarly, section 95A of the Goods and Services Tax Act states:

*Despite anything provided in Section 95, where a person fails to furnish, as and when required by this Act, the Regulation or the Commissioner General, a return or any information in relation to a matter affecting either his liability to tax or the amount of the tax, that person is liable to pay a penalty, by way of additional tax, of K100.00 for each month or part thereof calculated in respect of the period commencing on the last day that return or information was due to be furnished and ending on the day on which that return or information is furnished*

A penalty for late lodgement will apply whether there is a tax liability created by the assessment or not. However, the Commissioner General will generally remit where:

- there has been no prior request for a return to be lodged; and
- the return results in a nil assessment or a refund.

In all circumstances, when it becomes apparent that lodgement will be delayed, the taxpayer should advise the IRC of the reasons for the delay and should seek an extension of time for lodgement.

21. Both the Act and the GST Act provide the same basis for the Commissioner General to remit LLP. By way of example section 316(3) of the Act states the following:

*The Commissioner General may in any case, for reasons that he thinks sufficient, and either before or after making an assessment or notice, remit the additional **tax** or penalty or any part of that **tax** or penalty.*

22. Where an extension has not been requested and approved partial remission would be applied in the first instance to reflect the Commissioner Generals differential approach to LLP. This will ensure that the penalty imposed is reflective of the level of non-compliance and the actual benefit sought in delaying lodgement. Further remission will only be considered where the circumstances which led to the delay in lodgement were exceptional and/or unpredictable. Circumstances, such as the sudden ill health of a taxpayer or the destruction or loss of a taxpayer's records due to flood or fire would be considered as exceptional or unpredictable circumstances. Actions taken by the taxpayer to mitigate any negative consequences of the late lodgement, such as making an advance payment of an estimated liability, would also be a favourable factor for considering further remission.
23. LLP would not generally be fully remitted where the delay in lodgement occurs through the neglect, inadvertence or omission of the taxpayer. Explanations such as the taxpayer forgot or that they have been absent from PNG are not regarded as acceptable reasons for remitting the penalty.
24. Reasons for delay, whether in relation to the taxpayer or their agent, such as staffing problems (including a lack of qualified staff), remote locality, computer breakdown or installation, expansion of the business (takeover or amalgamation) and difficulties due to seasonal fluctuations in work load (e.g. primary producers) are not normally regarded as exceptional circumstances which could not be anticipated. However, a balanced view must be taken, and there will be some cases where, for example, an extraordinarily lengthy delay in postal or electronic transfers unbeknown to the taxpayer may warrant remission in whole or in part.
25. Lodgement should not be delayed simply because you have insufficient funds to make the payment. This will only result in penalties being applied for both late lodgement and late payment. If the lodgement of a return will create a liability which you will have difficulty paying then you will be far better off lodging the return and immediately initiating a formal payment arrangement.

### Late Payment Penalty

26. The Commissioner General has no discretion as to the imposition of late payment penalties.

27. That late payment penalties are statutorily imposed is evident by the wording of the law. By way of example section 262(1) of the Act states:

*If any tax remains unpaid after the time when it becomes due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from that time or, where an extension of time has been granted under Section 261, from such date as the Commissioner General determines, not being a date before the date on which the tax was originally due and payable.*

Similarly, in relation to Management Fee Withholding Tax, section 196T(3) of the Act states:

*Subject to Subsection (4), if any management fee (withholding) tax remains unpaid after the time when it became due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from the due date.*

28. Having imposed a penalty; various provisions of the Act and the GST Act grant the Commissioner General discretion to remit the additional tax or any part of the additional tax, for reasons that she thinks sufficient.
29. The Commissioner General has allowed some initial remission of LPP by allowing a grace period that will automatically allow some concessional leeway whilst taxpayers adjust to the more proactive administration of the penalty provisions. The concessory time period will be gradually reduced over time. However, if payment is so significantly late such that it is made beyond the grace period allowed then LPP will accrue from the date immediately following the last day of the grace period and be imposed in full. Where this happens the taxpayer will be required to formally request for remission stating fully the reasons for the late payment, actions taken to mitigate those reasons and what steps they have taken to ensure future payments will be made by the due date.
30. The Commissioner General is also legally entitled under both the Act and the GST Act to apply refunds to other outstanding taxes. To this extent section 91(5) of the GST Act states:

*Notwithstanding any other provision in this Act, the Commissioner may apply any amount refundable under this Act, or part thereof, in satisfaction of any amount of tax or duty due and owing by the taxpayer under the provisions of any other revenue legislation which the Commissioner is empowered to administer and any amount so applied shall be deemed to have been refunded to the taxpayer.*

When all taxes are operating in the new IRC accounts system this will happen as a matter of course to ensure that a net position is considered, and therefore no LPP will accrue to the extent that a credit/refund is available on another tax type. In the interim taxpayers will be required to request the Commissioner General to apply

existing credit balances to outstanding debts they wish to offset. Should this not occur it would be a factor which would warrant consideration for remission of any penalty that has been posted. However, if those credit amounts are subsequently disallowed then the original debt will be reinstated from its original due date and penalties will accrue from that date.

31. The remission of late payment penalty as it applies to withholding taxes must be considered in regard to the particular circumstances in which the obligation to withhold and remit arises. In these cases the payer is simply withholding amounts from payments that would otherwise have gone to the original payee. In such cases the payer is acting as agent for the payee to meet their tax obligations. They are holding the money on someone else's behalf. They are in fact holding such monies in trust for the payee who creates a fiduciary duty as well as a statutory duty to remit the amount withheld to the Commissioner General by the prescribed date.
32. Penalty interest is by its nature a compensatory amount and it is imposed where the State has been denied the use of funds because amounts were not paid by the due date. Penalty interest will only be remitted or partially remitted in limited and exceptional circumstances (e.g. natural disasters such as fire, flood, or drought which directly caused serious financial difficulty).
33. The rate of interest is intentionally set so as to act as a penalty. That is, the rate is designed to ensure that the IRC is considered to be 'creditor of last resort'. The reasoning behind charging penalty rates (i.e. higher rates than are available in the market) is to ensure we really are viewed as creditor of the very last resort and to encourage prompt payment of debts.
34. Some LPP's incorporate an additional amount of tax as a flat penalty in addition to the per annum component. Most relevant of these are LPP for Salary or Wage Tax and Goods and Services Tax which include a flat rate of additional tax of 20% and 10% respectfully. Section 299G(8) of the Act is worded as follows:

*Where an amount (in this subsection referred to as the "principal amount") payable to the Commissioner General by a group employer under this section remains unpaid after the expiration of the period within which it is required to be paid—*

- (a) the principal amount continues to be payable by the group employer to the Commissioner General; and*
- (b) the group employer is liable to pay to the Commissioner General additional tax by way of penalty being—*
  - (i) an amount (in this subparagraph referred to as the "relevant penalty amount") equal to 20% of the principal amount; and*
  - (ii) an amount at the rate of 20% per annum of the sum of so much of the principal amount as remains unpaid and so much of the relevant penalty amount as remains unpaid, computed from the expiration of that period,*

*but the Commissioner General may, in any case, for reasons he thinks sufficient, remit any additional tax payable under the provisions of this section.*

35. The relevant penalty amount in such circumstances is intended to act as a deterrent to delays in payment and is intended to modify behavior to ensure future compliance. As discussed earlier the Commissioner General will generally only maintain the full imposition of this component of penalty in circumstances which reflect the most egregious circumstances.
36. Factors that the Commissioner General may consider in remitting such penalties would be:
- The voluntary nature of the disclosure of the liability;
  - The extent to which that disclosure is a full and true disclosure of all their income tax and wider withholding obligations;
  - The extent of any past dealings the taxpayer has had with the IRC;
  - The extent to which the IRC could have reasonably known of the non-payment and had not acted on that knowledge; and
  - The degree of commercial or economic advantage they have obtained by delaying the payment
37. The practical application of these penalties is demonstrated by the following example:

You lodge and pay your Salary or Wage statement of K1,000 for January 2014 on 7<sup>th</sup> June 2014 (5 months late). Penalties are calculated as follows:

20% relevant penalty amount (1000*.2)	K200
Plus 20% p.a on 1200 (being principle amount plus additional penalty amount) from the 8 <sup>th</sup> Feb 2014 until 7 <sup>th</sup> June  K1200*119/365*20% = K78.25 (approximate)	K78.25
Total	K278.25

38. Late payment of GST would be calculated in a similar manner. If the additional K278.25 penalty is also paid on the 7<sup>th</sup> June then no further debt will accrue. However, the 20% p.a penalty will continue to accrue on the relevant penalty amount (K200) until such time as it is paid in full.

39. Depending on the particular facts and circumstances remission may be effected either in full or in part. Partial remission may be made by way of the rate applied or the time period of the unpaid amount or a combination of both. The preceding paragraph provides an example where the Commissioner General might remit the interest rate to reflect the positive attempts of compliance. There may also be circumstances where there is a time period that the debt remains unpaid that is beyond the control of the taxpayer but does not necessarily warrant a full remission. For example, the sole person authorized to make the payment was unexpectedly incapacitated and hospitalized for 10 days when the payment was due. The payment was eventually made 40 days late. In this circumstance it might be appropriate to remit the penalty in full for the first 10 days but charge the penalty for the 30 days for which no explanation has been provided.
40. Any taxpayer who is unable to pay their debts as and when they fall due should immediately contact the IRC Managed Debt area and discuss their situation.

#### Payment arrangements and Penalties

41. In entering into a payment arrangement with the IRC both the IRC and the taxpayer must take into account the accruing penalties in determining the instalment amount of the repayment so that the entire debt can be repaid in a suitable timeframe. It is not appropriate for a payment arrangement to be entered into without consideration firstly of the remission, if any, of penalties; and secondly the repayment of those penalties. In such circumstances payments will be allocated to the principle amount and any relevant penalty amount in the first instance, so as to minimise any penalty interest.

#### Objection Rights

42. A taxpayer has the right to object against an assessment in accordance with section 245 of the Act:

*(1) Subject to Subsection (2), a taxpayer dissatisfied with an assessment under this Act may, within 60 days after service of the notice of assessment, post to or lodge with the Commissioner General an objection in writing against the assessment stating fully and in detail the grounds on which he relies.*

*(2) Where the assessment has been amended in any particular, the right of a taxpayer to object against the amended assessment is limited to a right to object against alterations or additions in respect of or matters relating to that particular.*

43. A taxpayer may object to the quantum of a late lodgement penalty included in an assessment. There are no grounds for objection against the imposition of late payment penalties.
44. However, there is no further right of review where the late lodgement penalties do not exceed the limits set by section 245 of the Act:

*The Review Tribunal has no power to review decisions of the Commissioner General relating to the remission of additional tax or penalty, except decisions relating to the remission of additional tax or penalty imposed by Section 316, where the additional tax or penalty payable, after the making by the Commissioner General of his decision, exceeds–*

*(a) in any case to which Section 316(1) applies–the greater of the following amounts, namely, the sum of K100.00 for each complete calendar month or part of a calendar month or an amount calculated at the rate of 20% per annum of the tax assessable to the taxpayer, both amounts calculated in respect of the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens;*

45. There is no legislative provision which allows a taxpayer to object to the Commissioner General's decision not to remit late payment penalty in the Income Tax Act.
46. The GST Act (see section 73 of the GST Act) does provide objection rights where a taxpayer is dissatisfied with the Commissioner General's remission decision. The objection must be made in writing within two months (60 days) after the date on which the remission decision was given by the Commissioner General stating the grounds for objection.

### **Related matters**

47. As a general rule the Commissioner General will not vary the due date for which lodgement and payment of withholding taxes are to be made. Such a decision would only be undertaken in exceptional circumstances. Some taxpayers have put the case that their particular circumstances makes it extremely difficult for them to comply with the required due dates. The Commissioner General is of the view that the electronic transfer of information in conjunction with the availability of electronic lodgement and payment allows taxpayers a means by which to meet their obligations within the specified timeframes. This in conjunction with the generous grace period currently applied means that taxpayers are not currently being penalised in these circumstances. Such arguments will not justify remission of penalties without some evidence of other contributing factors and evidence that they have taken suitable steps to mitigate the circumstances giving rise to the difficulties in meeting the legislated due dates. By way of example, where a taxpayer's fortnightly salary or wage deduction amount is relatively consistent at say K1,000 they could arrange a regular

monthly transfer payment of that amount with the balance paid as soon as practical after the due date.

## **Application**

This Tax Circular sets out the Commissioner General's view in relation to the imposition and remission of late lodgment and late payment penalties. Its principles are to be considered and followed by all staff in relation to the administration of the law as it relates to the remission of penalties. Whilst the Circular is confined to the remission of late lodgment and late payment penalties the principles espoused are equally valid when considering the remission of other similarly imposed taxes.

## **Authorized by**

Betty Palaso  
Commissioner General of Internal Revenue Commission

## **Issued**

10 October 2014

## **Subject References**

Late Lodgment Penalty  
Late Payment Penalty  
Payment arrangements  
Remission of late lodgment penalty  
Remission of late payment penalty

## **Legislative References**

*Income Tax Act 1959*

- Section 185D
- Section 196F
- Section 196T
- Section 262



- Section 284
- Section 299
- Section 311E
- Section 311AW
- Section 312AE
- Section 316
- Section 357
- Section 196A
- Section 196C
- Section 196D
- Section 196F
- Part III Division 14C
- Section 232
- Section 299D
- Section 299C

*Goods and Services Tax Act 2003*

- Section 73
- Section 85
- Section 95A