



Operational Statement

Extension of time applications for filing income tax returns

(Able to be published externally)

PURPOSE

This Operational Statement ("OS") sets out the practice that the Commissioner of Inland Revenue ("the Commissioner") will apply when considering applications for an extension of time to file an income tax return. All references to legislation in this OS are to the Tax Administration Act 2012 ("TAA") or the Income Tax Act 2012 ("ITA") unless specified otherwise.

This OS applies from December 2014.

LEGISLATION

The relevant legislative provisions are sections 31 of TAA, and section 80 of the ITA.

Section 80 Income Tax Act 2012: Filing of income tax returns

- (1) *A person who is liable for income tax or has a loss under section 28(1) for a tax year must file an income tax return for the year within three (3) months after the end of the tax year.*
- (2) *A partnership or the trustee of a trust must file an income tax return for a tax year within three (3) months after the end of the tax year.*
- (3) *An income tax return must be in the approved form and filed in the prescribed manner.*

Section 31 of Tax Administration Act 2012: Extension of time to file a tax return

- (1) *A taxpayer required to file a tax return under a tax law may apply in writing to the Commissioner for an extension of time to file the return.*
- (2) *Subject to subsections (3) and (4), the Commissioner;*
 - (a) *may, upon satisfaction that there is reasonable cause, grant an application under subsection (1); and*
 - (b) *must serve the taxpayer with notice of the decision on the application.*
- (3) *An extension of time under subsection (2) must not exceed 12 months after the original due date for filing the return.*
- (4) *The Commissioner cannot extend the time for filing a tax return required under the Income Tax Act if the taxpayer has not fully paid provisional tax as required under that Act in respect of the tax year to which the application for an extension of time relates.*
- (5) *An extension of time granted under this section does not change the date for payment of tax due as specified in the tax law under which the return is required to be filed.*
- (6) *The Commissioner must provide an applicant under subsection (1) with notice, in writing, of the decision on the application.*
- (7) *The Regulations may provide for an extension of time for a tax agent to file the tax returns of their clients.*

DEFINITIONS

The following terms are used throughout this OS:

Due date: The date by which an annual income tax return must be filed as prescribed by Section 80 of the Income Tax Act 2012.



Extension of time or extension of time arrangement: An arrangement by which the Commissioner extends the due date for filing an annual income tax return to a date set by the Commissioner.

SUMMARY

A taxpayer may request for an extension of time to file their annual income tax return. The request can be made by contacting Inland Revenue in writing. Taxpayers who do not file a return by the due date may be liable for a late filing penalty. Therefore any requests for an extension of time should be made before the due date for filing the return, or the expiry of an existing extension of time arrangement.

In deciding whether to grant an extension of time, the Commissioner will take into account the following:

- The reasons for requesting an extension of time;
- The taxpayer's filing history;
- The taxpayer has paid provisional tax relating to that tax year (if any) and;
- If previous extension of time arrangements had been adhered to.

An extension period that is appropriate to that particular taxpayer's circumstances may be granted. The taxpayer will be notified in writing of the Commissioner's decision whether or not an extension of time is granted.

INLAND REVENUE SERVICES STANDARD PRACTICE

Request for an extension of time arrangement

Taxpayers can make a request for an extension of time in the following ways:

- a. In writing; or
- b. by email.

When making a request, taxpayers should state clearly that they are requesting an extension of time. To ensure that Inland Revenue is able to consider the request for an extension of time, the following information should be provided:

- a. The taxpayer's name and Tax Identification Number (TIN);
- b. The type of return required to be filed (e.g. IR2);
- c. The return period to which the extension applies;
- d. The length of the extension of time required; and
- e. The reasons for requesting an extension of time.

Timing

A request for an extension of time should be made on or before the due date for filing the return. However the legislation confers a discretionary power to the Commissioner to accept applications after the due date in some cases.



The Commissioner's consideration

An extension of time may be granted if the Commissioner is satisfied that the taxpayer will be unable to file a tax return by the due date. Each request for an extension of time will be considered on a case by case basis. Reasonable consideration will be given to the circumstances of the taxpayer and whether an extension of time is appropriate for that taxpayer. The Commissioner cannot grant an extension of time to file an income tax return if there is outstanding provisional tax for that same period.

In determining whether it is appropriate to grant an extension of time, the Commissioner will consider the following:

- a. The reasons for requesting an extension;
- b. The taxpayer's return filing history;
- c. Taxpayer has paid provisional tax (if any) relating to tax year's outstanding return e.g. if request for time extensions for the 2014 income tax returns, we check if respective taxpayer had paid 2014 provisional tax, if any was required to pay. If nil or not required, then check other criteria; and
- d. If previous extension of time arrangements had been adhered to.

▪ *Reasons for requesting an extension:*

Examples of circumstances that the Commissioner may consider appropriate for granting an extension of time include:

- a. The taxpayer is unable to obtain the necessary information to file the return. For example, the taxpayer is waiting to receive a Tax Withholding Certificate from the Ministry of Finance.
- b. The taxpayer has been overseas and needs more time to prepare the return. This is dependent on the dates of departure and return to the country and whether the taxpayer was able to file the return before departure.
- c. Ill health, hospitalisation or injury of the taxpayer or a member of the taxpayer's family (e.g. partner or dependent).
- d. The taxpayer is awaiting the finalisation of accounts for a related taxpayer or entity.

These are merely some examples of circumstances in which the Commissioner may grant an extension of time. There may be other situations under which an extension of time may be appropriate.

▪ *Return filing history:*

The Commissioner will also take into account the taxpayer's return filing history in considering whether to grant an extension of time. If the taxpayer has other outstanding returns it is unlikely that an extension of time will be granted for the current year's return, unless there are legitimate reasons for not filing the outstanding returns for the previous years.

It should be noted that any extension of time agreed to would only apply to the current year's return and not to the other outstanding returns. The prescribed maximum period for an extension relating



COL003
December 2014

to the previous years' returns would have elapsed in most cases and the Commissioner cannot grant an extension beyond that prescribed date.

▪ *Previous extension of time arrangements:*

Where a taxpayer has previously been granted an extension of time but has failed to adhere to that arrangement, it is unlikely that the Commissioner will agree to a further extension of time unless there are legitimate reasons for the taxpayer's failure to adhere to the earlier arrangement.

Period of Extension

The maximum period for an extension of time that can be granted to any taxpayer is 12 months of the following year. This applies to taxpayers with a standard balance date and a non-standard balance date. The Commissioner will not necessarily agree to the maximum extension period in every case. The period of extension will be set after giving reasonable consideration to the reasons for the delay and the circumstances of the taxpayer.

Where an extension of time has been granted and the taxpayer is subsequently unable to meet the new due date, they should contact Inland Revenue before the expiry of the extension to request a further extension of time to avoid a late filing penalty. Again, there must be legitimate reasons for a further extension of time to be granted.

Notification and confirmation - extension of time granted or declined

Requests made by email will receive a response via email. In all cases, once a decision has been made, Inland Revenue will write to the taxpayer confirming the granting or declining of an extension of time.

Late filing penalties

A late filing penalty will be imposed if a return is not filed by the due date, or by the date agreed to in an extension of time arrangement. The late filing penalty will generally not be reversed if it has been imposed before an extension of time was granted.

Authority

- Principals may approve: 1 day > < 2 months
- ACEO may approve: 2 months > < 4 months
- DCEO may approve: 4 months > < 6 months
- CEO may approve: up to one year

Approved

Pitolau Lusio Sefo Leau
COMMISSIONER OF INLAND REVENUE

Date

11 March 2015