GEN003
April 2013

Operational Statement - Voluntary Disclosure

(Able to be published externally)

PURPOSE

This Operational Statement applies to voluntary disclosures under Sections 51 (4) and Section 83 (2) of the Tax Administration Act 2012 ("TAA"). It establishes guidelines for making a voluntary disclosure, the timing of notification and criteria of a full and accurate voluntary disclosure. These guidelines are also designed to give taxpayer as much opportunity as possible to advise us of any known omissions or errors.

The voluntary disclosure regime provides an incentive to taxpayers to determine their correct tax liability, and to be honest and up front with the Inland Revenue Services about shortfalls in their self-assessed tax, or any wrongdoing on their part. This is especially important now that Samoa is moving towards self-assessment for Income Tax. This Operational Statement applies to all tax types.

There are two types of voluntary disclosure that are recognised by the TAA:

(i) Voluntary disclosure of a false or misleading statement in a tax return that results in a tax shortfall[1] (section 51(4)); and
(ii) Voluntary disclosure of information relating to the taxpayer's act or omission in respect of which a penalty is imposed (section 83(2)).

By making a timely voluntary disclosure that is full and accurate, a taxpayer may benefit in two ways:

(i) In the case of section 51(4) above, they may be entitled to a reduction in the applicable tax shortfall penalty; and
(ii) In the case of 83(2) above, they may be omitted from the list of taxpayers with outstanding tax liabilities/penalties that the Commissioner is authorised to publish in the media pursuant to section 83(1).

RELEVANT LEGISLATION

Section 51(4) and (5) of TAA talks about voluntary disclosure; what is done to taxpayers who voluntarily disclose and when it is valid for a voluntary disclosure to be considered for the omission.

(4) The amount of a tax shortfall penalty imposed under subsection (2) on a person is reduced by 10 percentage points if the person voluntarily discloses the statement or omission to which the section applies prior to the earlier of:
- *(a) discovery by the Commissioner of the tax shortfall; or*
- *(b) the commencement of an audit of the tax affairs of the person to whom the statement relates.*

(5) No tax shortfall penalty is payable under subsection (2) if:
- *(a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or*

[1] See Operational Statement [INV003] for more information on Tax Shortfall.

(b) *the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in filing a self-assessment return.*

Section 83 (1) and (2) of TAA talks of voluntary disclosure that may result in the publication of taxpayer's name.

(1) The Commissioner may publish in the Savali, a newspaper, or other media forum, or on the IRS website a list of persons who have been assessed with a liability for penalty under a tax law.
(2) The Commissioner may omit from a list published under this section a reference to a person to whom subsection (1) applies if the Commissioner is satisfied that, before the commencement of the investigation or inquiry that resulted in the imposition of penalty, the taxpayer voluntarily disclosed to the Commissioner or to any officer authorised by the Commissioner in that behalf complete information and full particulars of the act or omission in respect of which penalty was imposed.

GUIDELINES

Summary* - *Voluntary disclosure under section 51(4)

A shortfall penalty payable by a taxpayer under Section 51 may be reduced if the taxpayer makes a voluntary disclosure to the Commissioner of all the details of the tax shortfall in a timely manner. A voluntary disclosure is made in a timely manner if is made before the earlier of:

a. the discovery of the tax shortfall by the Commissioner
b. the commencement of an audit by IRS officers.

Before discovery is when:

a. Commissioner has not assessed the taxpayer's tax return
b. After 30 days of tax return due-date (grace –period e.g. April)

An audit or investigation starts at the earlier of:

a. The end of the Initial interview the IRS officer(s) has with the taxpayer or the taxpayer's representative after the taxpayer receives the Notice of the Audit/Inspection.
b. The time when –
    i. The taxpayer is notified of the inspection
    ii. An IRS officer inspects information (including books and records) of the taxpayer after the taxpayer receives the Notice of the Audit/Inspection

The Commissioner may from time to time:

a. Specify the information required for a full voluntary disclosure.
b. The level by which the shortfall penalty is reduced is 10 percentage points of the applicable tax shortfall penalty if the voluntary disclosure is made in a timely manner.

Summary* – *Voluntary disclosure under section 83(2)

The Commissioner is authorised under section 83 to publish in the newspapers and other media a list of persons who have been assessed with a liability for penalty under a tax law. However, a taxpayer's name may be omitted from that public list if they make a voluntary disclosure to the Commissioner in a timely manner.

A voluntary disclosure is constituted by *"complete information and full particulars of the act or omission in respect of which the penalty was imposed."*

A voluntary disclosure is made in a timely manner if it is made *"before the commencement of the investigation or inquiry that resulted in the imposition of penalty"*

- **Voluntary Disclosure Methods**

Taxpayers can make a voluntary disclosure in any one of the following ways:

a) By visiting the Inland Revenue Services office (Upolu or Savaii);
b) By letter, fax or email; or
c) During an interview (Initial Interview).

a) In-person visit:

If a taxpayer makes a voluntary disclosure by visiting or telephoning Inland Revenue Services (IRS), as much information as possible will need to be provided by the taxpayer.

Any IRS officer is able to record a voluntary disclosure when a taxpayer comes into the office. Inland Revenue will request taxpayers making voluntary disclosure to sign their written statement. IRS officer must lodge a record of the visit in Correspondence (RMS) also for proof and attach a scanned copy of disclosure that has been signed by taxpayer

b) Written disclosure:

If a voluntary disclosure is received in writing between the time of the first notification of the audit and the initial interview, it will be referred to the case officer responsible for the audit or investigation. The case officer will incorporate this as correspondence relating to the audit or investigation.

An acknowledgement will be made to the taxpayer that the disclosure has been received. If the written disclosure is not clearly signed by the taxpayer, the case officer will request that it is formally signed.

c) During the initial interview:

For disclosures made during the initial interview, the IR case officer will carefully record all information provided by the taxpayer and get them to review and sign as a true and correct record.

- **Time of commencement of an audit**

Subsection (4) (b) provides that voluntary disclosure is made before the commencement of an audit. An audit is taken to have commenced at the earlier of:

a) Receipt by the taxpayer of a Letter of Notification from IRS; or

b) Initial visit (unannounced) or spot check by an officer of the IRS

a) Letter of Notification:

The Notification letter is sent to the taxpayer letting them know that they have been selected for audit and stating reasons. The taxpayer is notified if any of the following persons have received notification:

↳ the taxpayer

- ↳ an authorised officer of the taxpayer
- ↳ a shareholder of the taxpayer (for close companies)
- ↳ a tax agent acting for the taxpayer
- ↳ a partner in partnership
- ↳ a person acting for, or on behalf of, fiduciary of the taxpayer

An authorised officer includes a director, secretary, receiver or liquidator. It does not include an employee.

b) Unannounced initial visits:

In the case of unannounced visits, the time of the notification will be the date of first contact with the taxpayer. (E.g. Spot Check)

If a taxpayer makes a voluntary disclosure prior to the earlier of receiving the letter of notification or the first visit by an IRS officer, the taxpayer will automatically be entitled to a reduction in the taxpayer shortfall penalty.

However, if the person fails to make a disclosure prior to these events, they may still qualify for a reduction in shortfall penalty if they satisfy the following:

(i) They make a full disclosure immediately after receiving the letter of notification; or they make a disclosure during the initial interview with the IRS Officer;

(ii) They are responsive to all further requests for information;

(iii) They are cooperative and helpful during the audit process; and

(iv) They give accurate, correct ad complete information.

- **Full Disclosure**

The disclosure must be full and complete. It is not up to the Commissioner to elicit the required information from the taxpayer. This does not necessarily mean disclosing the discrepancies to the last dollar but does require providing enough information to enable the auditor, investigator or officer to make an assessment. Each case will have to be considered on its own merits.

If a taxpayer is not able to provide full details at the first point of contact with IRS, the Commissioner will allow the taxpayer reasonable time to obtain more information. The time period for obtaining this information will be negotiated between the taxpayer and the responsible tax officer. Once this information is provided and the disclosure is considered full and complete, the date of the voluntary disclosure will be the date of the first point of contact.

a) Minimum details required:

To satisfy full and complete disclosure, the following minimum details must be provided:

- Taxpayer's details (name, trade name, TIN number, address, DOB/Date of Commencement or Incorporation date, contact telephone number)
- Nature of errors or omissions
- An explanation as to why the errors or omissions occurred (verbal or written)
- Valid and adequate supporting documents and information
- A declaration to be signed by taxpayer,
- Further information as is necessary to make an assessment

Where this information is not provided, the Commissioner will consider on a case by case basis whether the information provided is sufficient to satisfy the full and complete disclosure requirements. In doing so, the Commissioner will have regard to the taxpayer's reasons for not making the specified information available.

b) More than one tax shortfall:

Each tax shortfall is considered separately. If there is more than one tax shortfall, one being the subject of voluntary disclosure and the other being detected by an audit, the shortfall detected by the audit will not come within the voluntary disclosure regime.

If the items are identical or similar they will be treated as one tax shortfall. Therefore, for a full and complete voluntary disclosure, both items will need to be disclosed prior to the end of the initial interview. If one of the items is not disclosed until after the first interview, this will result in the taxpayer not satisfying the requirements of a full and complete disclosure.

c) Disclosure of another tax type:

If an audit is being carried out on one tax type and taxpayer makes a voluntary disclosure regarding another tax type, and they have been notified that the other tax type is being audited, the taxpayer will qualify for voluntary disclosure prior to notification of an audit as long as the disclosure meets all other requirements.

d) Disclosure where Inland Revenue already knows of the shortfall:

In situations where the information provided is required by law or Inland Revenue knows there is a tax shortfall and has verification of that shortfall, the taxpayer cannot make a voluntary disclosure. An example of this is when an employer files their P4s without an accompanying payment. The employer cannot voluntary disclose the non-payment of the PAYE as Inland Revenue will know that payment has not been made.

If Voluntary Disclosure is full and complete (i.e.) given all the criteria as above, there may be NO publication of the taxpayer's name in the Gazette/Savali.

Approved **Date**

____________________________ 18/07/2013

Pitolau Lusia Sefo Leau

COMMISSIONER OF INLAND REVENUE/CHIEF EXECUTIVE OFFICER