

Income tax – Penalties

As a taxpayer you are obliged to pay your taxes. Failure to meet your tax obligations may result in civil penalties, criminal penalties, or both. A single breach of your obligations may result in both a civil and a criminal penalty. For example, tax evasion is subject to both criminal and civil penalties.

What is a civil penalty? A civil penalty is one imposed by Inland Revenue rather than a court. The most common kinds of civil penalties include: late filing penalties; non-electronic filing penalties; late payment penalties; and shortfall penalties.

What is a criminal penalty? A criminal penalty is one imposed by a court upon conviction of an offence. The most common kinds of criminal penalties include: evasion; obstruction; and aiding or abetting another person to commit an offence.

Late filing penalties

You are obliged to file your tax returns on time. If you don't, you may have to pay a late filing penalty. The late filing penalty does not apply to GST or Fringe Benefit Tax (FBT) returns.

Inland Revenue will contact you if a penalty is going to be imposed. You can still avoid the penalty if you file your return promptly or have a valid reason for not filing your return on time.

Acceptable reasons include circumstances beyond your control, such as illness or accident, and being unable to obtain the information needed to complete your return

The amount of penalty depends on your net income. The three penalty bands are:

- ✦ Below 100,000 (\$50 penalty);
- ✦ Between \$100,000 to \$1 million (\$250 penalty); and
- ✦ More than \$1 million (\$500 penalty).

The late filing penalty for a reconciliation statement is \$250.

Once a penalty has been imposed it must be paid 30 days from the date of the statement advising you of the penalty, or by the end-of-year tax.

Late payment penalties

You are obliged to pay your tax on time. If you don't, you may have to pay a late payment penalty.

The late payment penalty consists of an initial penalty for paying tax late and a monthly incremental penalty on the amount owing.

The initial late payment penalties are calculated on the amount of late or unpaid tax. The initial penalty is 5% of the unpaid tax and comprises a 1% penalty the day after the due date and 4% penalty of the total outstanding amount not paid within a week of the due date.

Late payment penalties are not charged on unpaid tax of \$100 or less.

An additional penalty of 2% per month and 1% (on a compounding basis) applies on the outstanding amount of any unpaid tax and penalties.

Where a taxpayer is in financial difficulty, Inland Revenue may choose to remit tax or enter into payment arrangements.

If you contact Inland Revenue before the due date, the 4% penalty or the incremental late payment penalty can be waived.

If you contact Inland Revenue after the due date the incremental late payment penalty can be waived.

Shortfall penalties

You are obliged to pay your tax. Failing to take reasonable care in calculating your tax can result in shortfall penalties on unpaid tax.

A shortfall penalty is imposed on unpaid tax that should have been included in the original tax calculation.

There are five categories of behaviour that decide the penalty to be applied. The penalty increases in proportion to the seriousness of the breach. The categories are:

- ✦ Failure to take reasonable care (20% penalty);
- ✦ Adopting an unacceptable interpretation (20% penalty);
- ✦ Gross carelessness (40% penalty);
- ✦ Abusive avoidance, where shortfall exceeds \$10,000 (100% penalty); and
- ✦ Evasion (150% penalty).

Aiding or abetting

If you aid, abet, incite, or conspire with another person to commit an offence you will be liable to the same criminal penalties applied to the principal offender.

Criminal penalties for knowingly offending include:

- ✦ Imprisonment for a maximum of 5 years; and

- ✦ Up to \$50,000 for each offence.

Obstruction

Do not obstruct Inland Revenue with their enquires. If you obstruct Inland Revenue in calculating your correct tax obligations an additional penalty of 25% on the unpaid tax can be imposed on you.

You are entitled to contact your tax agent before allowing them to enter your premises. Contact us immediately if in doubt.

Reductions

Penalties can be reduced if you disclose the tax shortfall. However timing of the disclosure is critical. Disclosure:

- ✦ At the time of taking the tax position will receive a 75% penalty reduction.
- ✦ Before notice of an Inland Revenue investigation will receive a 75% penalty reduction.
- ✦ After notice of an Inland Revenue investigation, but before the investigation starts, will receive a 40% penalty reduction.

Deductions

- ✦ Penalties are not deductible.
- ✦ Lawyer's expenses in defending criminal or civil penalties are not deductible.

See us first

- ✦ Before making any financial decisions.
- ✦ To assist you in meeting the necessary legal or financial requirements.
- ✦ If you consider that any of the issues contained in this fact sheet may affect you.

Disclaimer

Important: This is not advice. Clients should not act solely on the basis of the material contained in this fact sheet. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. We believe the contents to be true and accurate as at the date of writing but can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents. This fact sheet is made available to our clients as a helpful guide for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.