Williams Chartered Accountants

Williams Chartered Accountants Limited
27 Norman Spencer Drive
Manukau City, Auckland 2241
P O Box 76301, Manukau City, Auckland 2241
Phone (09) 262 2552
Fax (09) 262 2553
Email admin@williamsaccountants.co.nz

PENALTIES AND INTEREST

Late Filing Penalties: How much is the penalty?

Penalties on income tax returns

The amount of a late filing penalty depends on your net income. Net income is gross income less allowable deductions, before any net loss offsets. If you have not filed your return yet, the penalty is based on the amount of net income shown in your previous year's return. When you file the late return the penalty will be adjusted in line with the actual net income figure shown on that return.

Net income	Penalty
Less than $100,000	$50
$100,000 to $1 million	$250
More than $1 million	$500

Penalties on residential land withholding tax returns

The penalty for filing a Residential land withholding tax (RLWT) return (IR1100) late is $250.

Penalties on employer monthly schedules

The late filing penalty is $250.

GST returns

The late filing penalty is dependent on your accounting basis at the time the return is due. If you are on the:

- Payments basis, it will be $50, and
- Hybrid, or invoice basis, it will be $250.

Late payment penalties

If you don't pay your taxes by their due dates, you may have to pay late payment penalties.
Late payment penalties consist of:

- Initial penalties for paying tax late, and
- Monthly incremental penalties on any amounts that remain unpaid.

If you file your employer monthly schedule but do not pay the amount calculated, you may also have to pay non-payment penalties.

How the penalties are calculated
The initial late payment penalties are calculated on the amount of tax that was paid late or that remains unpaid. The monthly incremental penalties are calculated on the amount of outstanding tax plus the initial late payment penalties that were imposed.

Late payment penalties are not charged on unpaid tax of $100 or less. These penalties also don't apply to student loan or child support payments.
The non-payment penalty is calculated on the amount not paid when you file your employer monthly schedule.

The amount of the penalty
All initial late payment penalties are applied in two stages:

- An initial 1% late payment penalty will be charged on the day after the due date
- A further 4% penalty will be charged if there is still an amount of unpaid tax (including penalties) at the end of the 7th day from the due date.
- 1% each month on the tax to pay that remains overdue

The 1% monthly penalty is no longer being charged on amounts that remain overdue for:

- GST - return periods ending 31 March 2017 onwards,
- Income tax including provisional tax for the 2018 income year onwards,
- Working for Families Tax Credits assessments for the 2018 income year onwards.

The initial penalty of 1% and the further 4% penalty will still be charged on these periods. If you have tax that remains unpaid for periods before those noted above or other tax types you'll continue to have the 1% monthly penalty charged.

The non-payment penalty (for employer monthly schedule payments) is 10% of the amount not paid. A further 10% is added each month the amount remains outstanding.

Shortfall Penalties

What are shortfall penalties?

Shortfall penalties apply to most taxes and duties. The exceptions are student loan repayments and child support repayments by liable parents. A shortfall penalty is one imposed as a percentage of a tax shortfall (a deficit or understatement of tax), resulting from certain actions on the part of a taxpayer. The law divides these actions into five categories of fault or breach, with a specified penalty rate for each category.
The five categories are:

- Lack of reasonable care
- Unacceptable tax position
- Gross carelessness
- Adopting an abusive tax position
- Evasion.

The penalty increases in proportion to the seriousness of the breach.

Breach	Standard Penalty (% of tax shortfall)
Lack of reasonable care	20%
Unacceptable tax position	20%
Gross carelessness	40%
Abusive tax position	100%
Evasion	150%

Criminal penalties

Types of tax offences

Criminal offences attract the same penalties regardless of the type of tax involved. The penalties apply to all taxes and duties, including PAYE deductions, GST, fringe benefit tax (FBT), employers' deductions of child support and student loan repayments.

Following are the main types of offences and their associated penalties:

1. Absolute liability offences

Failing to keep the books and documents as required by law, failure to provide information (including tax returns and forms) to Inland Revenue, and failure to issue a tax invoice within 28 days after a request is made, are absolute liability offences.
The penalties for conviction of an absolute liability offence are up to:

- $4,000 for a first offence
- $8,000 for a second offence
- $12,000 for any subsequent offence.

2. Knowledge offences

Knowingly breaching a tax obligation may result in a conviction for several offences.

Such offences include knowingly:

- Not keeping legally required books and documents
- Not providing information, including tax returns and forms, when required to do so.
- Providing altered, false, incomplete or misleading information, including tax returns and forms
- Not accounting to Inland Revenue for tax deducted or withheld
- Not deducting or withholding tax when required to do so
- For GST purposes, issuing two tax invoices for the same taxable supply.

If you didn't have the information requested, or failed to make or account for scheduler payments (formerly withholding payments) for reasons beyond your control, you won't be prosecuted.
The penalties on conviction for knowledge offences are up to:

- $25,000 for a first offence
- $50,000 for a later offence.

However, the penalty for knowingly using tax deductions for any purpose other than payment to Inland Revenue is imprisonment for up to five years and/or a fine of up to $50,000 for each conviction.

3. Evasion and similar offences

Certain actions are regarded as evasion offences if they are done either to:

- Evade the assessment or payment of tax by yourself or anyone else, or
- Obtain a refund or payment of tax in the knowledge that you're not lawfully entitled to it, or
- Enable someone else to obtain a refund or payment of tax in the knowledge that the other person isn't lawfully entitled to it.

Criminal offences relating to evasion include knowingly intending to evade tax by:

- Not keeping legally required books and documents
- Not providing information, including tax returns and forms, when required to do so
- Providing altered, false, incomplete or misleading information, including tax returns and forms.
- Not making a legally required deduction or withholding of tax.

It's also an offence to pretend to be another person for purposes relating to tax law. The penalty for evasion offences is imprisonment for up to five years and/or a fine of up to $50,000.

4. Offences relating to court orders
We can seek a court order to obtain information necessary for fulfilling our statutory obligations. Anyone convicted of failing to comply with such a court order may be sentenced to imprisonment for up to three months, or fined up to $1,000.

Obstruction
Obstructing Inland Revenue in carrying out its lawful duties, or in exercising its lawful powers, is an offence.

The penalty on conviction for obstruction is up to:

- $25,000 for the first offence
- $50,000 for subsequent offences.

Aiding or abetting
It is an offence to aid or abet someone else to commit an offence. Conviction will result in the same penalty as that for the person who committed the principal offence.

Employees and officers

An employee, agent or officer of a taxpayer commits an offence if they were responsible for that taxpayer committing an offence.
The employee will face a penalty if the principle offence was:

- caused by an action or omission of the employee, or with the employee's knowledge, or
- evasion committed by the employee.

If convicted, the employee will face the same maximum fine or term of imprisonment as the principal offender, the taxpayer.
For an employee to be convicted, Inland Revenue has to prove beyond reasonable doubt that the employee has knowingly or intentionally committed the offence. Obviously, a clerk who merely follows the instructions of a senior officer and doesn't know that a breach is being committed won't be penalised if the taxpayer is found to have committed an offence.

Interest

If you underpay your tax you will be charged interest from the day after the original due date for payment.

The interest rates are based on market rates, so they will vary over time.

How interest is calculated

Interest is calculated on a daily basis on the amount of underpaid tax. Interest does not compound and is not included when calculating penalties.

Interest on tax underpayments is charged on the tax owing, which includes accumulated penalties and shortfall penalties.
Interest starts on the day after the original due date for the tax. It ends on the day the tax is fully paid.