

TECHNICAL ADVISORY

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Technical Paper: *“INCOME TAX AND EDUCATION TAX PENALTIES”*

Purpose

This note provides guidance on the application of penalties for Income Tax and Education Tax purposes in accordance with the policy of the Ministry of Finance to review the penalty regime.

Legislative Reverences

All references are to the
Income Tax Act
The Education Tax Act.
The Tax Collection (Miscellaneous Provisions) Act
The Tax Penalties (Harmonization) Act

As part of the initiative to harmonize penalties across tax types, the Ministry of Finance has revised the penalty regime for Income Tax and Education Tax **effective October 1, 2014**. The legislation provides for penalties for late filing as follows.

Penalty for Late Filing

Every person who fails to file a return under the Income Tax Act (Section 71B) and the Education Tax Act (Section 12A) within the time required shall be liable to pay a penalty of five thousand dollars (\$5,000) for each month, or part of a month during which the failure to file the return continues up to a maximum of one million dollars.

Consequently, returns for Income Tax and Education Tax that are outstanding for years of assessment 2013 and prior years, as at October 1, 2014 will attract the penalty of \$5,000 monthly until the return is filed.

Penalties incurred shall be considered to be tax payable in addition to any other tax that is payable. The legislation also gives the Commissioner General the power to waive or reduce penalties if he is satisfied that there are circumstances that justify doing so.

Income Tax returns are due on or before March 15th, immediately following the year of Assessment for which it is due.

Returns - Persons Required to File

Section 67 of the Income Tax Act requires every person liable to pay income tax in respect of any year of assessment to file a return. Notwithstanding section 67, Section 71A now requires the following persons to file a return,

- i. A body corporate that is incorporated, registered or constituted under any enactment
- ii. A trust or other institution (whether incorporated or not) that is registered as a charitable organization under the Charities Act; and
- iii. Any person (including an individual) who carries on, or has carried on, a trade, profession, vocation or business.
- iv. Any person the Commissioner General requires to file a return under section 17FA of the Revenue Administration Act.

Section 67 (3) allows the Commissioner General to extend the time for delivery of a person's return, where an application for such extension is made under section 67 (2), on condition that the payment of such amount of tax as the Commissioner may specify, shall be treated as if it were due on March 15 in the year the return was due.

Section 66 (3)(c) – Estimated Tax Return

- Where the estimated tax return is not filed by March 15th or for business which commenced during the year, on or before December 31st

Penalty

- Where the estimated tax return is not filed by March 15th or December 31st, the person shall be liable to a penalty not exceeding \$1,000,000 determined by the Commissioner General and \$2,000 for day on which his default continues.

The Income Tax and Education Tax Annual Returns for which late penalties are due includes:

S04 – SELF-EMPLOYED PERSON'S ANNUAL RETURN **Due March 15th each year**

S02 – EMPLOYER'S ANNUAL RETURN (PAYE and Statutory Contributions) **Due March 31st each year**

IT02 - RETURN OF INCOME AND TAX PAYABLE - [ORGANISATIONS (BODIES CORPORATE)]
Body Corporate Returns **Due March 15th each year**

IT03 - RETURN OF INCOME AND TAX PAYABLE - [ORGANISATIONS (UNINCORPORATED BODIES OTHER THAN LIFE ASSURANCE)] **Due March 15th each year**

IT04 - RETURN OF INCOME AND TAX PAYABLE - [ORGANISATIONS (LIFE ASSURANCE)]
Due March 15th each year

IT07 DECLARATION OF ESTIMATED INCOME AND TAX PAYABLE (BODIES CORPORATE AND UNINCORPORATED BODIES) **Due March 15th each year**

S04a DECLARATION OF ESTIMATED INCOME, TAXES AND CONTRIBUTIONS PAYABLE (SELF EMPLOYED INDIVIDUALS) **Due March 15th each year**

Payment Application to a Debt

Section 22A of the Tax Collection Act “Application of Payments” states that if a payment is made on account of any amount owed by a tax debtor to the Commissioner General, the payment shall be applied:

- i. Firstly to any principal
- ii. Secondly to any interest
- iii. Thirdly to any penalty
- iv. Finally to any surcharge

Section 22A (2). A payment of an amount of interest, penalty, surcharge, or principal shall be applied first to the earliest of such amount owing.

Notwithstanding section 22A (1) and (2), the Commissioner General may agree in writing, as part of a settlement with a tax debtor, that a payment made on account of any amounts, be applied in a manner other than that required in section 22A (1) and (2).

A **Tax Debtor** is defined in the Tax Collection Act as a person who owes an amount in respect of any tax, penalty or surcharge.

Interest Charges

Interest shall be payable on all income tax due and payable which remains unpaid at the rate of 20% per annum until the liability is paid.

Interest is charged from the next day after the collection date. The collection date is defined in section 77 of the Income Tax Act, in relation to any assessment as the 30th day next after the date on which the notice of assessment is signed except that where pending an objection or

appeal, the collection of any portion of tax remains in abeyance the collection date shall be determined by:

- a. the Commissioner General to be the 30th day next after the date on which the objection is settled; or
- b. the Commissioner of Appeals to be the 30th day next after the appeal is determined; or
- c. by the Revenue Court to be the 30th day next after the case is settled.

Where an audit assessment is raised by the Commissioner General, the collection date is to be determined by the Commissioner General to be the 30th day next after the notice of assessment is issued by the Commissioner General.

Surcharge

In accordance with section 72 (3) and (4), where a person has neglected or refused to deliver a return under section 67 of the Income Tax Act, or has not been assessed, or has been assessed to a lesser amount, the Commissioner General may assess such person at such amount or additional amount or surcharge, according to his best judgment.

A surcharge may be an amount not exceeding treble the amount of the tax.

Additional Note

The Tax Penalties (Harmonization) Act 2014, also makes provision for offences relating to incorrect declaration, change of address, keeping proper records, refusal to deliver tax information aids and abets, etc., for which the taxpayer shall be liable on summary conviction in a Resident Magistrate's Court to a fine and or imprisonment.