Inland Revenue
Te Tari Taake

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA - MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

Deadline for comment | Aukatinga mō te tākupu: **31 October 2025**

Please quote reference | Whakahuatia te tohutoro: **PUB00499**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki public.consultation@ird.govt.nz

## FACT SHEET | PUKA MEKA

# Income tax – Unacceptable tax position shortfall penalty

Issued | Tukuna: Issue Date

IS ##/## FS #

This fact sheet accompanies **Interpretation Statement IS XX/XX: Shortfall penalty for taking an unacceptable tax position (PUB00499),** which explains the meaning of "unacceptable tax position" in relation to the shortfall penalty for taking an unacceptable tax position in s 141B of the Tax Administration Act 1994.

All legislative references are to the Tax Administration Act 1994.

## RELATED DOCUMENTS | TUHINGA WHAI PĀNGA

For an explanation of the requirements common to all shortfall penalties, that the taxpayer must have taken a "tax position" resulting in a "tax shortfall", and other matters common to all shortfall penalties, see:

- **IS XX/XX: Shortfall penalties – requirements for a "tax position" and a "tax shortfall" (PUB00500b)**
- **IS XX/XX: Shortfall penalties – reductions and other matters (PUB00500c)**

## Key provisions | Whakaratonga tāpua

**141B:** Unacceptable tax position

## Unacceptable tax position

1. Section 141B imposes a shortfall penalty for taking an unacceptable tax position where:
   - the taxpayer has taken a tax position;
   - **the tax position relates to income tax** (excluding withholding-type taxes such as PAYE, FBT, and RWT) and, beginning 1 January 2027, multinational top-up tax;
   - a tax shortfall arises from the tax position and **the tax shortfall is more than both:**
     - **$50,000, and**
     - **1% of the taxpayer's total tax figure for the relevant return period**; and
   - the tax position is an "unacceptable tax position".
2. The penalty is 20% of the tax shortfall. The amount of the penalty may be capped at $50,000 if certain requirements are met.
3. Accordingly, **an unacceptable tax position penalty will only apply where the taxpayer's tax position relates to income tax** (excluding withholding-type taxes such as PAYE, FBT, and RWT) and, beginning 1 January 2027, multinational top-up tax**.** The penalty does not apply to tax positions relating to GST.
4. **In addition, for the penalty to apply, the resulting tax shortfall must exceed both $50,000 and 1% of the taxpayer's total tax figure for the relevant return period**. The taxpayer's total tax figure is the amount shown in the taxpayer's tax return (as filed by the taxpayer) as tax paid or payable, a net loss or a refund. Where a taxpayer has paid tax or has tax to pay, the amount is the tax paid or payable before any group

offset election or subvention payment. Where a taxpayer has no tax to pay, the amount is equal to the net loss of the taxpayer, treated as having a positive value multiplied by the basic rate of income tax for companies. For the purpose of determining whether a tax shortfall exceeds the threshold amounts:

- a tax return provided by a partnership, look-through company or group of persons is treated as if it were a tax return of every partner in the partnership, effective look-through interest holder for the look-through company, or person in such group; and
- the tax rate applying to a partnership or look-through company is the same as the basic rate for income tax for companies.

5. IS XX/XX: Shortfall penalty for taking an unacceptable tax position (PUB00499) explains the meaning of "unacceptable tax position" as follows. A taxpayer takes an unacceptable tax position if, viewed objectively, their tax position fails to meet the standard of being "about as likely as not to be correct". In summary:

- A tax position will be "about as likely as not to be correct" if:
  - even though wrong, it can be argued on rational grounds to be right;
  - it is one on which "reasonable minds could differ". There must be room for a real and rational difference of opinion;
  - it has about an equal chance of being correct.
- Whether a tax position is "about as likely as not to be correct" is decided objectively. Whether the taxpayer believes that their tax position was correct is irrelevant to this decision.
- A taxpayer's tax position must be "about as likely as not to be correct" when the taxpayer takes that position, based on the law at that time.
- The focus is on the legal soundness of the tax position. However, where factual issues turn on questions of evaluation, whether a taxpayer's view of the facts is "about as likely as not to be correct" may be considered in making the decision.
- It is possible for a taxpayer to take an unacceptable tax position even though they have followed the advice of a tax advisor.
- A taxpayer does not take an unacceptable tax position merely by making a mistake in calculating or recording numbers used in, or for use in preparing, a return.
- A taxpayer does not take an unacceptable tax position to the extent they have relied on an official opinion that the Commissioner gives.

- Generally, a taxpayer does not take an unacceptable tax position merely by using the accounting income method (AIM) to calculate their provisional tax and an approved AIM provider's AIM-capable accounting system.

## About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by a fact sheet that summarises and explains an item's main points. While it summarises the Commissioner's considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further Status of Commissioner's advice (Commissioner's statement, Inland Revenue, December 2012).