

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

Shortfall penalties – s 141A, 141B and 141C of the Tax Administration Act 1994

Reading guide

The accompanying draft Interpretation Statements and Fact Sheets update [IS0053](#): Shortfall penalty for not taking reasonable care (October 2005), [IS0055](#): Shortfall penalty – Unacceptable interpretation and unacceptable tax position (April 2005) and [IS0060](#): Shortfall penalty for gross carelessness (August 2004).

The above items are still technically correct, however since their publication there have been a number of legislative changes and new case law. For this reason, the Commissioner has decided to update these items (including the examples) and provide additional examples.

The Commissioner has also decided to provide separate guidance on the threshold requirements for a shortfall penalty (that there be a “tax position” and a “tax shortfall”) and on reductions and other matters that arise when a shortfall penalty is imposed. These matters covered in these two new draft Interpretation Statements are common across all the different shortfall penalties (with some exceptions), and before were discussed in each of IS0053, IS0055 and IS0060.

What changes have been made?

The main updates to the draft interpretation statements are outlined below in more detail. The interpretation statements have also been put into our new template format, updated for consistency and plain English and accompanying fact sheets provided.

IS XX/XX: Shortfall penalty for not taking reasonable care and Fact Sheet (PUB00498)

The meaning of “not taking reasonable care” has not changed since IS0053 was published in 2005. However, the circumstances in which a taxpayer who uses a tax agent will be treated as having taken reasonable care have been prescribed in the legislation. This draft statement considers this amendment and subsequent case law.

IS XX/XX: Shortfall penalty for taking an unacceptable tax position and Fact Sheet (PUB00499)

The meaning of “unacceptable tax position” has not changed since IS0055 was published in 2005. However, GST and withholding-type taxes have been removed from the scope of the penalty, and the circumstances in which taxpayers will be treated as not having taken an unacceptable tax position have been prescribed in the legislation. This draft statement considers these amendments and subsequent case law.

IS0055 covered both the “unacceptable interpretation of a tax law” requirement that applied to tax positions taken before 1 April 2003 and the “unacceptable tax position” requirement that applies to tax positions taken after that date. As the “unacceptable interpretation” requirement is no longer relevant for taxpayers, this draft statement considers only the “unacceptable tax position” requirement.

IS XX/XX: Shortfall penalty for gross carelessness and Fact Sheet (PUB00500a)

The meaning of gross carelessness has not changed since IS00600 was published in August 2004. The draft statement is updated for subsequent case law.

IS XX/XX: Shortfall penalties – requirements for a “tax position” and a “tax shortfall” and Fact Sheet (PUB00500b)

The draft statement contains a fuller discussion of the meaning of “tax position” and “tax shortfall” than was contained in IS0053, IS0055 and IS0060 and includes a number of examples. It considers legislative refinements to the unacceptable tax position shortfall penalty limiting it to income tax and excluding GST and withholding-type taxes and increasing the thresholds for the penalty.

IS XX/XX: Shortfall penalties – reductions and other matters and Fact Sheet (PUB00500c)

IS0053, IS0055 and IS0060 also discuss in varying levels of detail when the respective shortfall penalty is reduced (or increased). The Commissioner has decided to include these matters, along with other matters that arise once the Commissioner has imposed a shortfall penalty (such as the assessment and payment of shortfall penalties), in a separate item.

What about the interpretation statements for shortfall penalties for abusive tax position and evasion or similar act?

The interpretation statements [IS0061](#): Shortfall penalty for taking an abusive tax position (December 2005) and [IS0062](#): Shortfall penalty – evasion (November 2006) are also being updated. These two draft statements will be consulted on (together) in the near future.

Let us know what you think

We are consulting on these items until **31 October 2025** and welcome all feedback.