

TAX ADMINISTRATION – SHORTFALL PENALTIES

Reference: **PUB00501** and **PUB00502**

Reading guide for public consultation

Why are we consulting on these items?

During 2006 the Commissioner published two interpretation statements explaining the shortfall penalty for taking an abusive tax position (s141D) and for evasion or similar act (s 141E), [IS0061](#) and [IS0062](#) respectively.

The above items are still technically correct. However, since their publication there have been a number of legislative changes and new case law. Consequently, the Commissioner has decided to update these interpretation statements.

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 are issues that are common (with some exceptions) across all the different shortfall penalties. Draft items that consider these matters have been prepared and recently been through the public consultation process (PUB00500b and PUB00500c).

Similarly, interpretation statements explaining the shortfall penalty for not taking reasonable care (s 141A, IS0053), for unacceptable interpretation and unacceptable tax position (s 141B, IS0055) and for gross carelessness (s 141C, IS0060) have been updated and recently been through the public consultation process (PUB00498, PUB00499, PUB00500a respectively).

What changes have been made?

The main updates to the draft interpretation statements are outlined below. The interpretation statements have also been put into our new template format and updated for consistency and plain English.

Abusive tax position (PUB00501)

The legal test for a shortfall penalty for abusive tax position has not changed since IS00601 was published in February 2006. The draft statement is updated for subsequent case law and updated legislation including a legislative amendment that removed the \$20,000 threshold for the imposition of an abusive tax position shortfall penalty.

Evasion or similar act (PUB00502)

The legal test for a shortfall penalty for evasion or a similar act has not changed since IS0062 was published in November 2006. The draft statement is updated for subsequent case law and legislation, such as the exception where a person is liable to pay an employer's withholding payment penalty, and the new penalty and offences concerning electronic sales suppression tools. The draft statement provides a fuller explanation of the requirements for each of the similar acts listed in s 141E(1), includes a new example, and updates the existing examples.

This draft statement also replaces [QB 10/04](#), which clarified a point regarding the knowledge requirements for evasion or a similar act.

The draft statement specifies the Commissioner's view that, for evasion involving a company where a director is also potentially liable, only one shortfall penalty will be imposed, and it will be imposed on the company where possible.

Let us know what you think?

We are consulting on these items until **15 December 2025** and welcome all feedback.