



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

Deadline for comment | Aukatinga mō te tākupu: **15 December 2025**

Please quote reference | Whakahuatia te tohutoro: **PUB00502**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
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FACT SHEET | PUKA MEKA

Shortfall penalty for evasion or a similar act

Issued | Tukuna: Issue Date

IS ##/## FS #

This fact sheet accompanies **Interpretation Statement IS XX/XX: Shortfall penalty for evasion or a similar act (PUB00502)**, which explains the shortfall penalty when a person evades the assessment or payment of tax, or does any of the similar acts specified in s 141E of the Tax Administration Act 1994.

All legislative references are to the Tax Administration Act 1994 (TAA) unless otherwise stated.

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

141E: Evasion or similar act

Evasion or similar act

1. Section 141E imposes a shortfall penalty of 150% of the tax shortfall for evasion or a similar act if the following requirements are satisfied:
 - The taxpayer has taken a tax position.
 - Taking the tax position has resulted in a tax shortfall.
 - The taxpayer has done an act listed in s 141E(1)(a)–(f), and an exception does not apply for para (b). Paragraph (a) is evasion of the assessment or payment of tax under a tax law. The other paragraphs outline various similar acts and omissions that require knowledge.
2. The Interpretation Statement focuses on the mental requirements for evasion or a similar act, and what is required for the acts outlined in s 141E(1)(a)–(f). Broadly, evasion requires intention and actual knowledge, wilful blindness, or subjective recklessness. Negligence or carelessness is insufficient. Similar acts to evasion also require actual knowledge, wilful blindness, or subjective recklessness.
3. The following facts are relevant when considering whether the mental requirements for evasion or a similar act have been met:
 - The term “evade” connotes the exercise of will in avoiding. The person must intend to evade the assessment or payment of tax.
 - There must be more than mere failure to meet a tax obligation. There must be some blameworthy act or omission on the part of the taxpayer.

- Evasion or a similar act requires knowledge of the relevant facts or tax obligation. There must be actual knowledge, or neglect of available means of knowledge.
 - Knowledge is tested subjectively but can be inferred from objective consideration of surrounding circumstances and conduct.
 - Subjective recklessness will also satisfy the mental elements of evasion or a similar act. Subjective recklessness requires a deliberate disregard of one's obligations, or an appreciation of a positive risk and proceeding regardless.
 - Knowledge can also be inferred from wilful blindness, which is when a taxpayer deliberately closes their eyes to their obligations.
 - An omission can constitute evasion or a similar act if the necessary knowledge requirement is present.
 - What the person needs to have knowledge of depends on the relevant paragraph. For evasion under s 141E(1)(a), the person must know their act or omission will breach a tax obligation.
 - For the purpose of s 141E(d) to 141E(1)(f), which concern obtaining or attempting to obtain refunds or payments of tax, the taxpayer must know the relevant person is not lawfully entitled to the refund or payment. It is not sufficient to knowingly obtain or attempt to obtain the relevant refund.
 - For paras (b) and (c) in s 141E(1), knowledge of the relevant act is sufficient.
4. Unlike the other shortfall penalties, the onus of proof rests with the Commissioner to show that a taxpayer is liable for a shortfall penalty for evasion or a similar act under s 141E.

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).