

## FACT SHEET | PUKA MEKA

# Shortfall penalties – requirements for a “tax position” and a “tax shortfall”

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IS 26/03 FS 1

This fact sheet accompanies interpretation statement [IS 26/03: Shortfall penalties – requirements for a “tax position” and a “tax shortfall”](#), which explains the “tax position” and “tax shortfall” requirements common to the shortfall penalties provided under ss 141A to 141E of the Tax Administration Act 1994.

All legislative references are to the Tax Administration Act 1994.

## Key terms | Kīanga tau tāpua

<b>Tax position</b>	A position or approach regarding tax under a tax law.
<b>Tax shortfall</b>	The difference between the tax effect of the taxpayer’s tax position for the return period and the correct tax position for that period.
<b>Taxpayer’s total tax figure</b>	The amount shown in the taxpayer’s tax return as tax paid or payable (before any group offset election or subvention payment), a net loss (treated as having a positive value multiplied by the basic rate of income tax for companies) or a refund.

## OVERVIEW

1. A shortfall penalty applies only if:
  - a taxpayer has taken a tax position;
  - there is a tax shortfall, and
  - the legal test for the relevant penalty is met.
2. **For an unacceptable tax position shortfall penalty:**
  - The **tax position must relate to income tax** (excluding withholding-type taxes such as PAYE, FBT, and RWT) or, beginning 1 January 2027, multinational top-up tax, **not GST**.
  - **The tax shortfall must be > \$50,000 AND > 1% of the taxpayer's total tax figure.**
3. For explanations of the legal test for the relevant penalties, see:
  - IS 26/04: Shortfall penalty for not taking reasonable care
  - IS 26/05: Shortfall penalty for taking an unacceptable tax position
  - IS 26/06: Shortfall penalty for gross carelessness
  - IS 26/07: Shortfall penalty for abusive tax position
  - IS 26/08: Shortfall penalty for evasion or similar act
4. For an explanation of other matters relating to the shortfall penalties, see IS 26/09: Shortfall penalties – reductions and other matters.
5. IS 26/03: Shortfall penalties – requirements for a “tax position” and a “tax shortfall” explains the “tax position” and “tax shortfall” requirements.

## Requirements for a “tax position” and a “tax shortfall”

### The taxpayer has taken a tax position

6. A “tax position” is a position or approach regarding tax under a tax law.
7. Shortfall penalties can be imposed on tax positions taken in respect of the following tax types:
  - Income tax;

- Except in the case of a shortfall penalty for taking an unacceptable tax position in s 141B:
  - Withholding-type taxes such as PAYE, FBT, and RWT;
  - GST;
  - Tax credits such as working for families tax credits; and
  - Employer obligations under the Child Support Act 1991 and the Student Loan Scheme Act 2001.
- 8. The unacceptable tax position shortfall penalty in s 141B applies only to tax positions relating to income tax (excluding withholding-type taxes such as PAYE, FBT, and RWT) and, beginning 1 January 2027, multinational top-up tax. Accordingly, the unacceptable tax position shortfall penalty does not apply to tax positions relating to GST.
- 9. A tax position can be taken in a tax return. A “tax return” includes the pre-populated account of an individual’s income held by Inland Revenue when finalised.

## Tax shortfall

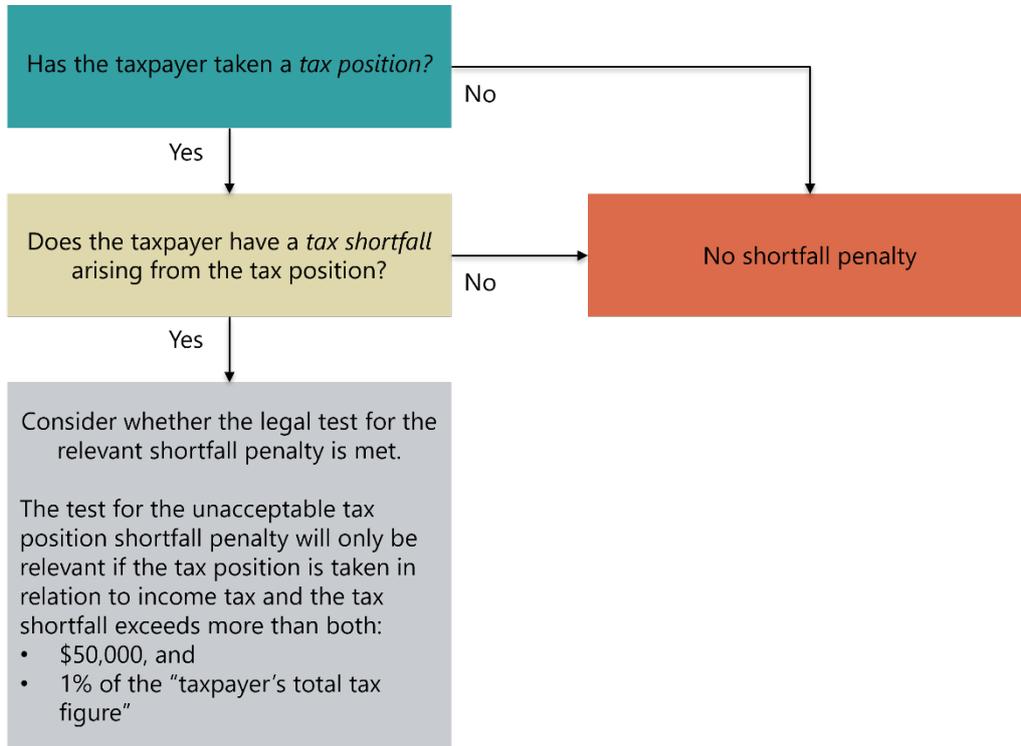
- 10. A tax shortfall arises when the taxpayer’s tax position is not correct and results in too little tax to pay or overstates a tax benefit, credit or advantage. Generally, the tax shortfall is the difference between the tax effect of the taxpayer’s tax position for the return period and the correct tax position for the period.
- 11. The tax effect of a tax position is calculated using:
  - the taxpayer’s marginal tax rate or tax rates during the return period; or
  - where the taxpayer has no tax to pay, the tax rate or lowest marginal tax rate that would apply to the taxpayer during the return period if they had tax to pay.
- 12. For an unacceptable tax position shortfall penalty in s 141B to apply, the tax shortfall must be more than both of:
  - \$50,000; and
  - 1% of the total tax figure for the relevant return period.
- 13. 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.

14. The following flowchart shows how the tax position and tax shortfall requirements apply.

**Figure 1 | Hoahoa 1 Flowchart showing how the tax position and tax shortfall requirements apply**



## 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).