

FACT SHEET | PUKA MEKA

Shortfall penalty for gross carelessness

Issued | Tukuna: 27 March 2026

IS 26/06 FS 1

This fact sheet accompanies interpretation statement [IS 26/06: Shortfall penalty for gross carelessness](#) which explains the meaning of gross carelessness in s 141C of the Tax Administration Act 1994. It discusses the circumstances that could be relevant in determining whether someone has been grossly careless and how to distinguish gross carelessness from lower levels of negligence. The IS also discusses relevant case law and provides several practical examples for clarity.

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 26/03: Shortfall penalties – requirements for a “tax position” and a “tax shortfall”**
 - **IS 26/09: Shortfall penalties – reductions and other matters**
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Key terms | Kīanga tau tāpua

Acceptable tax position	A tax position that although wrong can rationally be argued to be right, is one on which reasonable minds could differ and has about an equal chance of being correct.
Reasonable care	Doing what a reasonable person in the particular circumstances would do.
Tax Position	A position or approach regarding tax under a tax law.
Tax Shortfall	The difference between the tax effect of the taxpayer's tax position for the return period and the correct tax position for that period.

Overview of gross carelessness

- The following is an overview of the gross carelessness shortfall penalty and meaning of "gross carelessness":
 - Applies to most tax types.
 - Penalty is 40% of the tax shortfall.
 - Gross carelessness means doing or not doing something in a way that, in all the circumstances, suggests or implies complete or a high level of disregard for the consequences.
 - Gross carelessness involves more than mere inadvertence or lack of reasonable care.
 - For conduct to be grossly careless it must create a high risk of a tax shortfall occurring, where the risk and its consequences would have been foreseen by a reasonable person in the taxpayer's circumstances.
 - Failing to give any thought to an obvious and serious risk constitutes gross carelessness.
 - Gross carelessness does not require the taxpayer to have acted intentionally.
 - A person who takes reasonable care in taking the tax position, or who takes an acceptable tax position, is not grossly careless.
- The following table sets out circumstances that could be relevant in determining whether a taxpayer is grossly careless. Depending on the particular facts, other

circumstances may be relevant. The table also includes references to case law illustrating how the circumstance was considered in determining whether the taxpayer was grossly careless.

Table | Tūtohi 1 – Relevant circumstances in determining gross carelessness

Circumstances	Cases
The person's experience, education and skills	<i>Case W4</i> , <i>Case 9/2015</i> (2015) 27 NZTC 3-008 (TRA) and <i>Case 10/2016</i> (2016) 27 NZTC 3-032 (TRA)
The significance of the transaction, or transactions of a similar nature when viewed together, in the context of the taxpayer's business or activities	<i>Case W4</i> and <i>Case 9/2015</i>
The size of the tax shortfall	<i>Case W4</i>
The scale and duration of activities	<i>Case 5/2013</i> (2013) 26 NZTC 2-004 (TRA)
Warnings given by Inland Revenue or advisors in relation to the risk of the tax shortfall	
Pressures experienced by the taxpayer	<i>Case W3</i> (2003) 21 NZTC 11,014 (TRA)
The short time-frame between the purchase and the sale of the property	<i>Case W4</i>

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).