

FACT SHEET | PUKA MEKA

Income Tax – Abusive tax position shortfall penalty

Issued | Tukuna: 27 March 2026

IS 26/07 FS 1

This fact sheet accompanies interpretation statement [IS 26/07](#): **Shortfall penalty for taking an abusive tax position** which explains the meaning of “abusive tax position” in relation to the abusive tax position shortfall penalty in s 141D of the Tax Administration Act 1994.

Legislative references are to the Tax Administration Act 1994 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 26/03](#): **Shortfall penalties – requirements for a “tax position” and a “tax shortfall”**
- [IS 26/09](#): **Shortfall penalties – reductions and other matters**

For an explanation of the requirement that there is an unacceptable tax position see:

- [IS 26/05](#): **Shortfall penalty – Shortfall penalty for taking an unacceptable tax position**

Key provisions | Whakaratonga tāpua

141D: Abusive tax position

Key terms | Kīanga tau tāpua

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| 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. |
| Unacceptable tax position | A tax position that, viewed objectively, fails to meet the standard of being about as likely as not to be correct. |
| Abusive tax position | An unacceptable tax position that, viewed objectively, a taxpayer takes in respect, or as a consequence, of an arrangement that has a dominant purpose of avoiding tax; or an unacceptable tax position that, viewed objectively, a taxpayer takes with a dominant purpose of avoiding tax. |

Abusive tax position

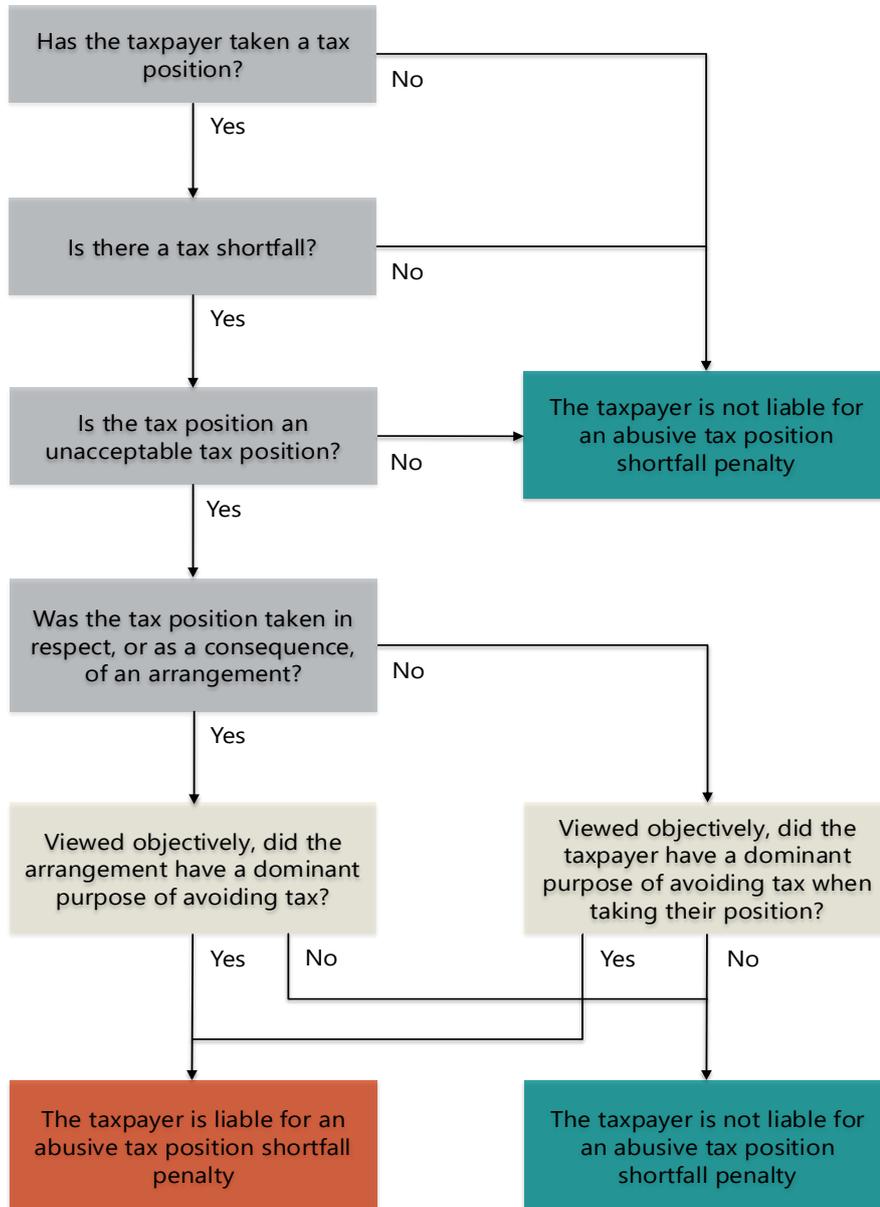
- Section 141D imposes an abusive tax position shortfall penalty on a taxpayer where:
 - the taxpayer takes a tax position;
 - a tax shortfall arises from the tax position;
 - the taxpayer's tax position is an unacceptable tax position;
 - the taxpayer's tax position is an abusive tax position.
- The amount of the abusive tax position penalty is 100% of the resulting tax shortfall.
- The interpretation statement explains the requirement that a taxpayer has taken an abusive tax position as follows:

- An unacceptable tax position is an abusive tax position under s 141D(7)(b)(i) or s 141D(7)(b)(ii) if the taxpayer took the tax position:
 - in respect or as a consequence of an arrangement entered into with a dominant purpose of avoiding tax (s 141D(7)(b)(i)); or
 - otherwise than in respect of such an arrangement, with a dominant purpose of avoiding tax (s 141D(7)(b)(ii)).
- Section 141D(7) requires an objective assessment of dominant purpose. Under s 141D(7)(b)(i), it is the dominant purpose of the arrangement that must be ascertained. The subjective purpose or motives of the parties who entered into the arrangement are not relevant.
- Under s 141D(7)(b)(ii), it is the dominant purpose of the taxpayer that must be ascertained. As the assessment is objective, the taxpayer's purpose must be ascertained by reference to objective facts. The subjective purpose or motives the taxpayer had when taking their tax position are not relevant.
- Purpose is the result or effect intended or sought by an arrangement (under s 141D(7)(b)(i)) or by a taxpayer (under s 141D(7)(b)(ii)).
- When there is more than one purpose, the "dominant purpose" will be the ruling, prevailing, governing, commanding or most influential or important purpose.
- The term "avoiding tax" is to be interpreted widely and is not limited to the statutory concept of "tax avoidance".
- The term "arrangement" is defined in s 3(1). The definition embraces all kinds of concerted action by which people may arrange their affairs for a particular purpose or to produce a particular effect.
- The factors that may indicate a dominant purpose of avoiding tax include artificiality, contrivance, circularity of funding, concealment of information, non-availability of evidence and spurious interpretations of tax laws.
- In determining whether an arrangement that has more than one purpose has a dominant purpose of avoiding tax, it is necessary to ask whether the particular way the arrangement has been put together can be explained by a non-tax purpose or purposes.
- An abusive tax position penalty does not apply automatically where there is a "tax avoidance arrangement" under s BG 1 of the Income Tax Act 2007 (ITA 2007) or s 76 of the Goods and Services Tax Act 1985 (GSTA). Section BG 1 of the ITA 2007 and s 76 of the GSTA apply when an arrangement has a more than merely incidental purpose of tax avoidance. Under s 141D, an arrangement must have a dominant purpose of avoiding tax before an abusive tax position penalty can be

applied. The dominant purpose requirement under s 141D is a higher threshold than the merely incidental requirement under s BG 1 of the ITA 2007 and s 76 of the GSTA.

- An abusive tax position penalty may be imposed in respect of an arrangement that is caught by an anti-avoidance provision or in respect of an arrangement that is not caught by an anti-avoidance provision. In both cases, the penalty will only apply if the arrangement has a dominant purpose of avoiding tax.

4. Figure | Hoahoa 1 shows how s 141D applies.



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).