

## FACT SHEET | PUKA MEKA

# Shortfall penalty for evasion or a similar act

Issued | Tukuna: 27 March 2026

### IS 26/08 FS 1

This fact sheet accompanies interpretation statement [IS 26/08: Shortfall penalty for evasion or a similar act](#), 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 26/03: Shortfall penalties – requirements for a “tax position” and a “tax shortfall”](#)
- [IS 26/09: Shortfall penalties – reductions and other matters](#)

## Key provisions | Whakaratonga tāpua

**141E:** Evasion or similar act

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## Key terms | Kīanga tau tāpua

<b>Subjective recklessness</b>	This occurs when facts actually known to a taxpayer must have alerted them to a relevant risk, and the taxpayer makes a conscious decision to ignore the risk and proceed with the act or omission without making any further inquiry.
<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>Wilful blindness</b>	This is when a taxpayer deliberately "shuts their eyes" to their obligations and does not inquire further because they do not want their suspicions confirmed.

## Evasion or similar act

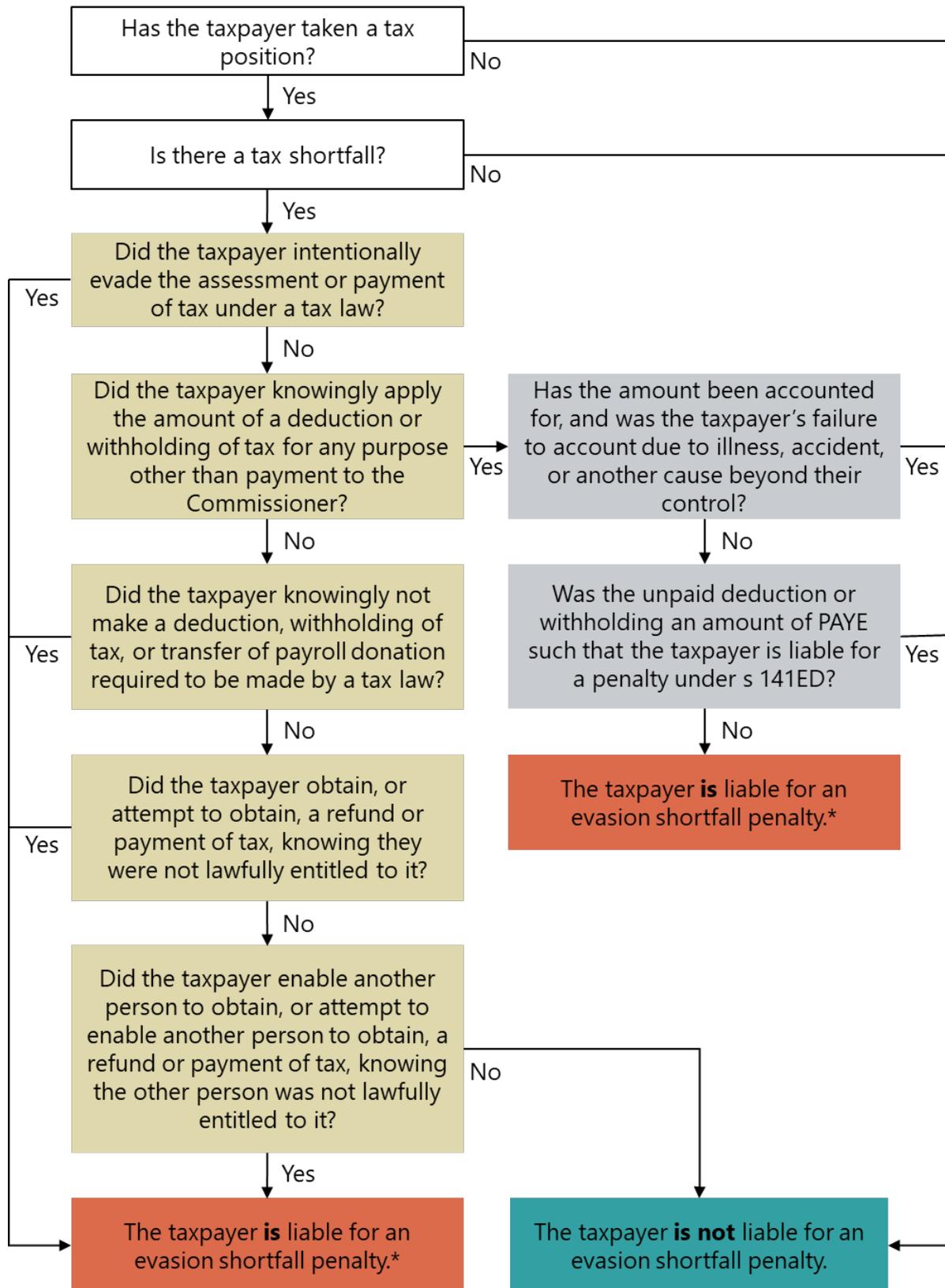
1. Section 141E imposes a shortfall penalty of 150% of the tax shortfall for evasion or a similar act if the following requirements are satisfied:
  - The taxpayer has taken a tax position.
  - Taking the tax position has resulted in a tax shortfall.
  - The taxpayer has done an act listed in ss 141E(1)(a)–(f), and an exception does not apply for para (b).
  
2. 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. The similar acts in paras (b)–(f) are:
  - Knowingly applying a deduction or withholding of tax other than in payment to the Commissioner (**s 141E(1)(b)**). The exceptions to para (b) are:
    - satisfying the Commissioner that the amount is accounted for and the failure to pay is due to illness, accident, or another reason outside the taxpayer's control (**s 141E(2)**), or
    - the unpaid deduction is PAYE to which a penalty under s 141ED applies (**s 141E(2B)**);

- Knowingly failing to make a deduction or withholding of tax, or transfer or payroll donation (**s 141E(1)(c)**);
  - Obtaining (**s 141E(1)(d)**) or attempting to obtain (**s 141E(1)(da)**) a refund or payment of tax, if the taxpayer knows they are not lawfully entitled to the refund or payment;
  - Enabling another person to obtain (**s 141E(1)(e)**) or attempting to enable another person to obtain (**s 141E(1)(f)**) a refund or payment of tax, knowing the other person is not lawfully entitled to the refund or payment.
3. As the only shortfall penalty that requires the mental elements of intention and knowledge, the seriousness of the penalty is reflected in its rate of 150% of the resulting tax shortfall. By comparison, the other shortfall penalties of lesser severity vary from 20% to 100% of the resulting tax shortfall.
4. The Interpretation Statement focuses on the mental requirements for evasion or a similar act, and what is required for the acts outlined in ss 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.
5. 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 ss 141E(d)-(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 merely 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.
6. 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. The standard of proof is the balance of probabilities.
7. The flowchart on the following page shows how s 141E 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).



\*However, the Commissioner may seek to prosecute instead of imposing a shortfall penalty, in accordance with the guidance above and CS 26/01.