

Shortfall penalties – reductions and other matters

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FS 26/09 FS 1

This fact sheet accompanies interpretation statement [IS 26/09: Shortfall penalties – reductions and other matters](#). IS 26/09 explains when a shortfall penalty is reduced (or increased), what happens when a taxpayer could be liable for more than one penalty, and the assessment, payment and disputing of shortfall penalties.

All legislative references are to the Tax Administration Act 1994.

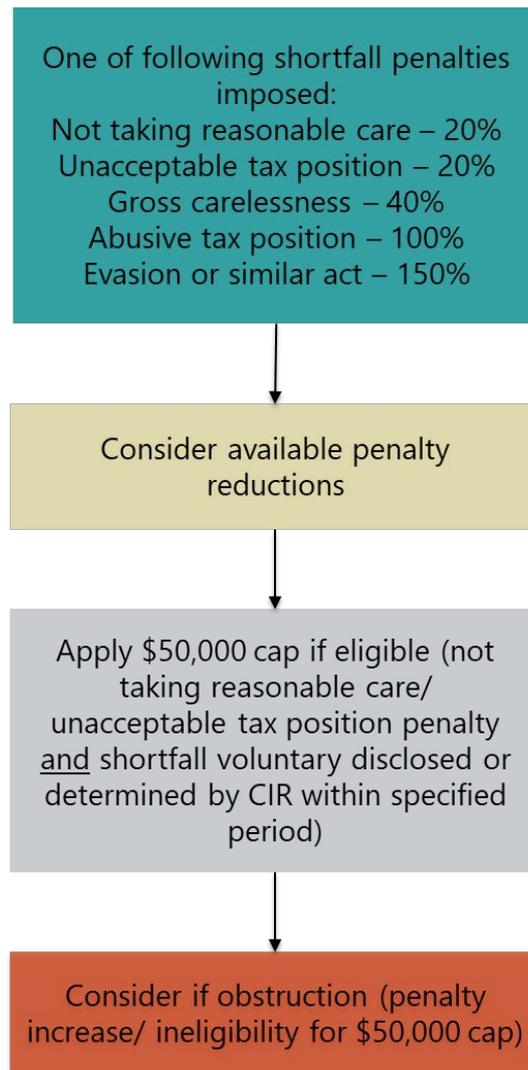
Introduction

1. Shortfall penalties are imposed when a taxpayer's position or approach regarding tax under a tax law is not correct and results in too little tax to pay or overstates a tax benefit, credit or advantage (tax shortfall).
 2. The amount of the penalty depends on the nature of the breach, with each type of shortfall penalty carrying a fixed penalty rate as a percentage of the tax shortfall.
 3. For an explanation of the legal tests for the shortfall penalties, and other matters relating to the shortfall penalties, see:
 - [IS 26/03: Shortfall penalties – requirements for a “tax position” and a “tax shortfall”](#);
 - [IS 26/04: Shortfall penalty for not taking reasonable care](#);
 - [IS 26/05: Shortfall penalty for taking an unacceptable tax position](#);
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- [IS 26/06](#): Shortfall penalty for gross carelessness;
- [IS 26/07](#): Shortfall penalty for taking an abusive tax position; and
- [IS 26/08](#): Shortfall penalty for evasion or a similar act.

4. The following flowchart sets out the high level steps in determining the amount of shortfall penalty a taxpayer will pay.

Figure | Hoahoa 1 – Determining the shortfall penalty amount payable



Available penalty reductions overview

5. The amount of shortfall penalty a taxpayer has to pay can often be reduced. Depending on the situation, the penalty can be reduced by anywhere from 40% up to 100%.

6. The main ways in which a penalty can be reduced are as follows:
 - Based on your previous behaviour;
 - If you let the Commissioner know all the details about the shortfall before the Commissioner discovers it themselves (voluntary disclosure). The amount of the reduction depends on whether you provide all the details to the Commissioner before (pre-notification) or after (post-notification) you are told an audit or investigation is going to happen;
 - If you clearly explain your tax position to the Commissioner at the time you make it (disclosure of tax position); or
 - If the shortfall is (or will be) reversed/corrected for good within 4 years (temporary shortfall).
7. Table | Tūtohi 1 summarises the percentage reduction available for each reduction and penalty type.

Table | Tūtohi 1 - Percentage reduction for each reduction and penalty type

Reduction type	Reduction percentage for each penalty type				
	Not taking reasonable care	Unacceptable tax position	Gross carelessness	Abusive tax position	Evasion
Previous behaviour ¹	50%	50%	50%	50%	50%
Voluntary disclosure (pre-notification) ²	100%	100%	75%	75%	75%
Voluntary disclosure (post-notification) ³	40%	40%	40%	40%	40%
Disclosure of tax position ⁴	N/A	75%	N/A	75%	N/A
Temporary shortfall ⁵	75%	75%	75%	75%	75%

8. Where a shortfall penalty qualifies for a reduction for a voluntary disclosure or disclosure of a tax position **and** temporary shortfall, the penalty is reduced once only.⁶
9. Sometimes more than one reduction type applies to a shortfall penalty imposed. Table | Tūtohi 2 sets out the percentage reduction that applies when a combination of reduction types applies to a shortfall penalty imposed.

¹ Section 141FB.

² Section 141G.

³ Section 141G.

⁴ Section 141H.

⁵ Section 141I.

Table | Tūtohi 2 - Percentage reduction for each reduction and penalty type - combination

Combination	Reduction percentage for each penalty type				
	Not taking reasonable care	Unacceptable tax position	Gross carelessness	Abusive tax position	Evasion
Voluntary disclosure(pre-notification) and Temporary shortfall	100%	100%	75%	75%	75%
Voluntary disclosure (post-notification) and Temporary shortfall	75%	75%	75%	75%	75%
Voluntary disclosure (pre-notification) and Previous behaviour	100%	100%	75% then 50%	75% then 50%	75% then 50%
Voluntary disclosure (post-notification) and Previous behaviour	40% then 50%	40% then 50%	40% then 50%	40% then 50%	40% then 50%
Voluntary disclosure (pre-notification) and Temporary shortfall and Previous behaviour	100%	100%	75% then 50%	75% then 50%	75% then 50%
Voluntary disclosure (post-notification) and Temporary shortfall and Previous behaviour	75% then 50%	75% then 50%	75% then 50%	75% then 50%	75% then 50%

Temporary shortfall and Previous behaviour	75 % then 50%	75% then 50%	75% then 50%	75% then 50%	75% then 50%
Disclosure of a tax position and Temporary shortfall And Previous behaviour	N/A*	75% then 50%	N/A*	75% then 50%	N/A*

* Reduction for disclosure of a tax position does not apply (but see temporary shortfall and previous behaviour combination)

\$50,000 cap and obstruction

10. A shortfall penalty for not taking reasonable care⁷ or for taking an unacceptable tax position⁸ is capped at \$50,000 in certain circumstances.
11. A shortfall penalty can be increased by 25% if the taxpayer (not a third party such as a tax agent) obstructs the Commissioner in determining the correct tax position.⁹

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).

⁷ Section 141A.

⁸ Section 141B.

⁹ Section 141K.