

INSOLVENCY



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Important tax ruling for liquidators and receivers

Inland Revenue yesterday advised a decision clarifying the position of changing the GST basis of a company in liquidation or receivership.

The issue concerns the position of a receiver or liquidator in changing the GST basis of the company in liquidation or receivership from a payments to an invoice basis so as to provide a net GST refund and then whether Inland Revenue is able to set such a refund off against tax debts of the company incurred before the start of the liquidation or receivership.

Inland Revenue has conceded that where a liquidator/receivership changes the accounting basis to an invoice basis and claims the GST credit, the Commissioner does not have an entitlement to offset earlier tax debts.

However, we believe IRD may now move to have the law amended to reflect its earlier position outlined below.

Earlier IRD position

Inland Revenue previously took the view that:

“While the liquidator/receiver is entitled to claim deductions by reason of section 58(1C), the effect of sections 58(1C) and 46(7) when read together is that the Commissioner is entitled to offset the portion of the GST refund which related to inputs from the period before the company

went into liquidation or receivership against tax debts of the company incurred before the liquidation or receivership.

This means all such tax debts, not just GST debts, and irrespective of whether the tax debts are preferential or not.

The Commissioner has statutory entitlement to retain some or all of the amounts in question.”

As one might expect, a company that goes into liquidation or receivership and which accounts for GST on a payments basis would typically have been in a position where creditors were not paid and therefore the entitlement to claim a GST credit for those debts would not have arisen.

If the liquidator or receiver changes the GST basis to an invoice basis then, notwithstanding the fact that the debts have not been paid, the liquidator would be entitled to recover the GST portion.

Advice and information

For further information about this issue, please contact partners Murray Tingey or Willy Sussman.

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