



Inland Revenue
Te Tari Taake

Inland Revenue's approach to Insolvency - The Two Way Street

Corporate Insolvency Conference

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IR's options for dealing with debt

- IR involuntary creditor in most or all NZ businesses
- We have no ability to withhold credit like a trade creditor
 - Future compliance key consideration for IR
- IR has other options for dealing with non-compliance
 - Offence for failing to pay tax deductions on time
 - Of particular concern when companies go into liquidation with unpaid tax deductions
 - Deduction Notices – s 157 TAA
 - Statutory Charges – s 169 PAYE
 - Power to obtain information
 - Section HK 11



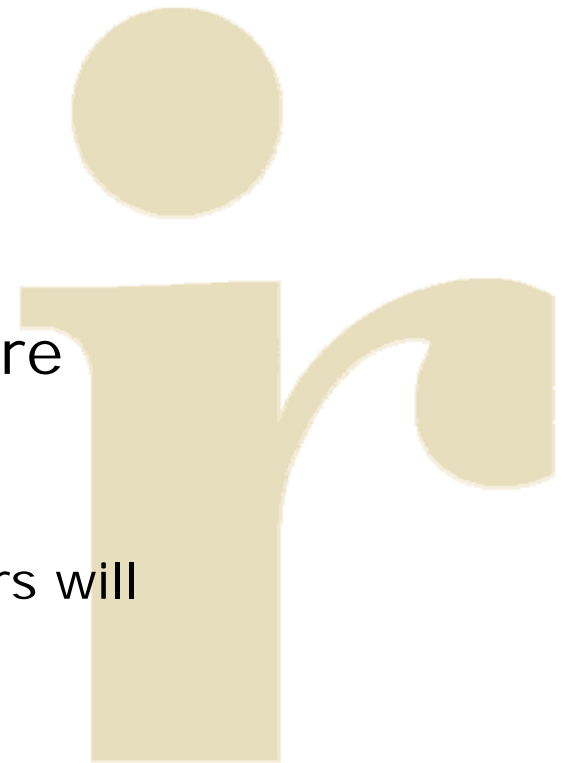
IR's Preference

- Government decided to retain preference for certain taxes as part of Insolvency Law Review
- Preferential taxes are trust monies collected on behalf of other taxpayers
- Important fiduciary relationship
- Important to preserve status of that relationship
- Meeting fiduciary obligations key to good corporate governance



IR's expectations of Insolvency Practitioners

- Insolvency Practitioners are fiduciaries
- Law very clear on what is expected of Insolvency Practitioners – Minimum requirements
 - Insolvency Act 1967/Insolvency Act 2006
 - Companies Act 1993
 - Receiverships Act 1993
- Expect practitioners to operate at more than just the bare minimum
- SES 1
 - General expectation of how all practitioners will carry on business



IR's expectations

- Expect practitioners to consider not just recovery, but also what offences have been committed and refer those to NEU in every case
- Expect practitioners to consider wider options rather than just dealing with physical assets
 - Can often get better recovery from non-tangible assets



IR's Response

- Practitioners whose failure to meet standards is to detriment of IR can expect IR to take steps to preserve its position
 - Includes legal action and removing practitioners
- IR will support practitioners who take action to protect IR's position
 - Doesn't mean direct involvement in all insolvency proceedings
 - Behaviour of customer will determine extent to which IR wishes to be involved e.g. phoenixing, asset stripping, misusing the corporate structure and failing to correctly return tax



IR's alternatives to liquidation

- Legal action is only ever a last resort for IR
- IR prefers to resolve debt issues directly with the customer
- Legal action is taken in cases where no resolution can be reached
- Often legal action will be due to continued non-compliance of customer
- Expectation that continued non-compliance will cease
- Expectation that these customer's affairs will be fully investigated by liquidator/OA



Other actions

- IR reserves right to bring other legal proceedings
- HK11 Income Tax 2004
 - Personal liability for directors/shareholders where arrangement leaves company unable to meet its tax obligations
- S135 Companies Act 1993
 - Reckless Trading
 - Proceedings have been brought by IR
 - Further cases are being considered



Voluntary Administration

- IR supports regime
- Will allow viable businesses to be rehabilitated thereby continuing to trade and generating future income
- Maximise long term recovery to Inland Revenue
- IR's preference can be included where agreed by creditors
 - Preference will not be the only ground on which IR decides whether to support a proposed Deed of Company Arrangement
- All cases will be decided on their own facts



Voluntary Administration

- All cases will be considered on their own facts
- Will update Standard Practice Statements in due course
- Will seek to work with the profession constructively as to best practices
- Consider new Regulations, but IR is likely to develop own approach over time
- Any discrimination against IR in the proposal



IR's key considerations

- Company's compliance history
 - Expect proposals to outline how past compliance defaults will be remedied
 - Expect proposals to outline how future compliance will be ensured
- Business must be truly viable
 - Non-viable businesses will not be able to successfully rehabilitate
 - Appointment of administrator for any other purpose than rehabilitation unlikely to receive support
- Expect more than mere creditors' pool
 - Opportunity to save businesses
 - Expect practitioners to consider more than just how to divide up the money



Other Considerations

- Adequacy of corporate information, reports etc provided by Administrator
- Company law compliance – voidable transactions etc – including associates
- Whether the company is part of an ongoing tax investigation
- Prospects of future income eg ceased trading
- Likelihood that DOCA proposals can be achieved



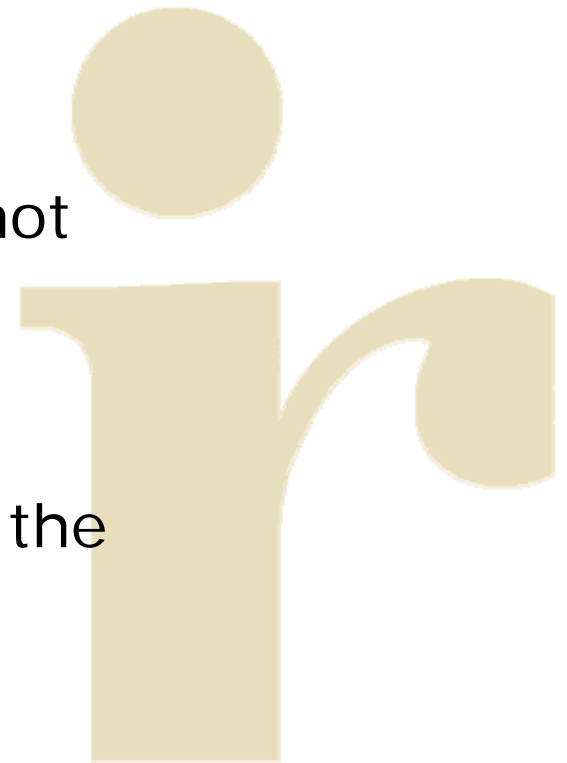
How will IR manage VA cases?

- Centralising work
 - Key staff in major sites responsible for dealing with all VA cases in their geographical region
 - Takapuna, Manukau, Hamilton, Wellington, Christchurch, Dunedin,
- Notification through ordinary channels
- Subsequent correspondence sent direct to key staff
- Technical support in place throughout process



IR will never support Deeds where....

- Inland Revenue is required to receive payment in any form other than money
 - Eg. Shares or physical assets
- The company has shortfall penalties imposed for evasion or abusive tax position and the offer of payment is not sufficient to clear those periods in full
- The Deed attempts to prevent Inland Revenue from extinguishing losses or imputation credits on the write-off of the uncollectible debt.



Funding

- IR will fund but only appropriate cases
- Appropriate cases include
 - Where concerning behaviours are the cause of loss to IR
 - Where insolvency practitioners have taken all steps required of them
 - Where insolvency practitioners have exhausted all other avenues of recovery
 - Case will directly benefit IR
 - Case is novel or of high risk
 - Favourable precedent will work in IR's favour for future cases
- IR requires clear understanding of case and analysis of risks vs benefits before funding can be considered



Insolvency Law Reform Changes

- s245A – Courts power to disregard related party votes
 - IR expects pragmatic approach from insolvency practitioners where related party voting determines outcome of vote
 - If such an approach is not taken IR will apply to Court to set aside those votes if they prejudice IR
- ss386A to 386F – Phoenix Companies
 - IR expects practitioners to identify companies to which these sections apply and take action or refer to MED's NEU
- s241AA – 10 day window
 - If practitioners accept appointment for companies for which IR has filed proceedings more than 10 working days prior, IR will consider whether to have their appointment invalidated

