



7 April 2022

[REDACTED]

Dear [REDACTED]

Thank you for your follow-up request made under the Official Information Act 1982 (OIA), received on 10 March 2022 regarding phoenix trading offenders. You requested the following:

I would like to request some examples from civil cases please.

As previously stated in our email of 8 March 2022 transferring your initial request to the Ministry of Business, Innovation and Employment, Inland Revenue does not hold information on prosecutions relating to phoenix trading offenders. However, civil claims can be brought by the Commissioner of Inland Revenue to court under the Companies Act 1993 (CA). The Commissioner would typically consider a combination of proceedings first, such as but not limited to, asset stripping of companies, freezing orders, Property Law Act actions, and trust busting.

There are two recent and relevant cases that were brought to Court by the Commissioner.

Commissioner of Inland Revenue v Clooney Restaurant Limited (CIV-2017-404-3000)

This case was brought to the Court by the Commissioner for breach of director duties and the phoenix provisions of the CA. Judgment was issued by the Auckland High Court by Justice Jagose J on 10 March 2020. This case involved claims for dissipation of assets, breach of director duties and breaching the phoenix provisions. The High Court ruled in favour of the Commissioner on all three causes of action and awarded relief. You can read the full judgement on the Ministry of Justice's website (www.justice.govt.nz) by searching for the case title in the *Judicial Decisions Online* section under *Courts* → *Decisions*.

Commissioner of Inland Revenue v Tower City Holdings Limited (CIV-2019-404-1331)

This case was brought to the Court by the Commissioner for failure to pay debts, to keep proper accounting records, and breaches of various directors' duties under the CA. Judgement was issued by associate Judge Smith on 31 August 2020. The Court ruled in favour of the Commissioner on the ground the defendant breached their obligation to keep proper accounting records, however it did not make findings on all of the further grounds, and specifically did not determine whether there had been a breach of duties by the directors. You can read the full judgement on the Ministry of Justice's website searching the case in the *Judicial Decisions Online* section under *Courts* → *Decisions*. Additionally, a case study is available on Inland Revenue's Tax Technical website (www.taxtechnical.ird.govt.nz) by searching for the case title.

Inland Revenue takes a 'right from the start' compliance approach, where we work with companies to make it easier for them to comply and harder not to. When a company is unable to meet its obligations, Inland Revenue encourages directors to contact Inland Revenue as early as possible to discuss their position. Where the Commissioner is a creditor of a company, she or he may have grounds to bring a claim under the CA. The

Commissioner will assess the appropriate avenue and action to be taken in each case and use enforcement where there is a risk to the integrity of the revenue system.

More information on paying debt and applying for financial relief can be found on Inland Revenue's website: <https://www.ird.govt.nz/managing-my-tax/debt-and-insolvency>.

Publishing of OIA response

Please note that Inland Revenue regularly publishes responses to requests that may be of interest to the wider public on its website. We consider this response is of public interest so will publish this response in due course. Your personal details or any information that would identify you will be removed prior to it being published.

Thank you for your request.

Yours sincerely



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