

**SUBMISSION ON THE TAXATION (ANNUAL RATES, RETURNS, FILING , AND
REMEDIAL MATTERS) BILL**

To the Finance and Expenditure Committee

INTRODUCTION

This submission is from:

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SUMMARY

While we support the Bill in general terms, we do not support clause 140 of Part 4, dealing with Amendments to the Goods and Services Tax Act 1985 (the Act). We cannot support the clause because of the serious effect which the proposed change would have on the equitable entitlements of Inland Revenue, employees and secured and unsecured creditors in liquidations and receiverships.

The proposed clause will have the effect of artificially inflating the preferential GST claim of Inland Revenue in liquidations and receiverships of distressed companies which have been returning GST on the payments basis permitted by the Act. This will be achieved to the detriment of all other creditors including employees, who will receive a lower distribution than their equitable entitlement under the Companies Act 1993.

CLAUSE 140

The clause seeks to deny liquidators or receivers of distressed companies the right of applying to change the accounting basis under which the company has been registered for GST purposes. It inserts a sub section 3B under clause 19(3), which will deny a liquidator, receiver, or administrator the normal statutory right under the Act to apply for a change to the registered person's GST accounting basis, from a payments basis to an invoice basis.

The scheme of the Act , is to require that registered persons account for GST on an invoice basis, recording the liability when it occurs. That is to say, the registered person pays GST on all sales made whether cash or credit, and claims as an offset, GST on all purchases made whether for cash or credit.

Section 19 (2) of the Act however allows the Commissioner to direct, where an application has been made by the registered person, that the tax may be paid on a payments or hybrid basis. The

payments basis is generally regarded as a concession to smaller businesses, which may not be able to fund the payment of GST on their credit sales made to customers who have yet to pay. The ultimate GST liability however, continues to accrue on an invoice basis.

Companies on the concessional payments basis include in their GST returns the tax component of sales receipts, and claim the tax component of goods and services paid for, thus deferring any claim for tax on unpaid creditor invoices and any payment for tax on sales not received.

When a distressed company which has been returning GST on a payments basis, is placed in liquidation or receivership, the GST liability is crystallised. But in many cases, the liability for GST will be overstated because the excluded GST on unpaid creditor invoices will normally significantly exceed the GST on unpaid sales invoices. This overstated GST liability is a preferential claim on the liquidation or receivership funds, as set down in the Seventh Schedule of the Companies Act 1993. As a result of Inland Revenue's overstated preferential claim, employees, secured and unsecured creditors would obtain a lower distribution from the insolvency than their claims would otherwise entitle them to.

The situation is currently rectified by insolvency practitioners, who apply for a change in accounting for GST from the payment to an invoice basis. This has the effect of injecting into the liquidation or receivership, for the benefit of all creditors including Inland Revenue, an amount equivalent to the GST on the unpaid creditor invoices, less the GST on the outstanding debtors of the distressed company.

Section 46 (7) of the Act, permits the commissioner to deduct from a refund on change of accounting basis, any GST payable at the date of liquidation or receivership. The effect of this section is, that the commissioner can retain the benefit of any GST payable at the date of liquidation, while the creditors generally gain some of the otherwise unrecognised benefit of GST paid on supplies made by them to the distressed company. We would comment that the Commissioner has in the past not always applied this right of set off consistently.

If the proposed change to section 19 of the Goods and Services Tax Act is implemented, the Inland Revenue's preference in liquidations and receiverships will be artificially inflated, while creditors will be denied the chance to share in the GST refunds to which distressed companies are entitled under the scheme of the Act.

RECOMMENDATIONS

We recommend that clause 140 be removed from the Taxation (Annual Rates, Returns, Filing, and Remedial Matters) Bill.

We recommend that Inland Revenue use the powers already granted to it under section 46 (7) of the Goods and Services Tax Act 1985 to protect its right to payment of the GST correctly owing at the date of liquidation or receivership of distressed companies.

If this recommendation is not acceptable, we propose as an alternative, that a change of accounting basis for GST be made mandatory on the liquidation, receivership or administration of any company.

13 October 2011

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13 October 2011