



7 December 2022

Tax Counsel Office  
Inland Revenue Department  
PO Box 2198  
Wellington

By email: [Public.Consultation@ird.govt.nz](mailto:Public.Consultation@ird.govt.nz)

Dear Sir / Madam

## [PUB 00426 GST – Section 58: Specified agents of incapacitated persons, and mortgagees in possession](#)

Thank you for the opportunity to comment on the draft Interpretation Statement.

In summary, our comments are as follows:

- We recommend that the interpretation statement be expanded to cover situations where both a liquidator and receiver are appointed.
- We recommend that you check whether the analysis regarding bankruptcy accords with current practice.

### **Background**

The draft is an update of an Inland Revenue policy statement “GST – specified agent for incapacitated persons” published in the Tax Information Bulletin Volume 7, No 6 (December 1995).

The earlier statement included only an explanation of the law and some examples but the updated statement explains more clearly how the law applies in each of the following specific situations:

- Death, liquidation and receivership;
- Bankruptcy; and
- Mortgagee in possession.

Our comments on each area are below.

### **Death, liquidation and receivership**

We agree with the analysis of the application of the law to death, liquidation, and receivership.

We note in some cases both a liquidator and receiver may be appointed and this should be covered in the Interpretation Statement.

A receiver has an obligation to quantify IRD's preferential claim so will return any unfiled amounts for pre-receivership periods and then file returns during the receivership period. Where there is a liquidator and receiver appointed each is responsible for their own taxable activity; however, the receiver has the obligation to file the GST returns on behalf of the taxpayer. Accordingly the liquidator would provide their transactions details to the receiver for inclusion in the return filing and account to them for any amounts payable. This should be covered in the interpretation statement.

### **Bankruptcy**

We agree with the comments in the draft Interpretation Statement that the position regarding bankruptcy is less clear. Despite this, the analysis seems logical.

We have reached out to our membership to see if the analysis in the draft Interpretation Statement accords with practice but have not received any member comment on point. This likely reflects the limited involvement of our wider membership with bankrupt individuals.

We recommend that you seek to verify whether the process outlined in the draft accords with standard practice.

### **Mortgagee in possession**

We have reviewed the analysis and it seems logical.

We would be happy to discuss our submission further with you. Please contact Jolayne Trim.

Yours faithfully

**John Cuthbertson FCA**

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Leader

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