

COMPANY DIRECTORS VS INLAND REVENUE DEPARTMENT

Legislation currently being considered by parliament could have an impact on Company Directors where companies fail.

Submissions made recently on the Insolvency Law Reform Bill push for Directors to be made personally responsible for non payment of taxes in return for the IRD giving up its preferential status to payment of these debts on company failure.

The alternative case suggests the current IRD preference is fair as the tax system design allows companies credit without any pre-approval arrangements.

So why are these arguments being had?

Being in business is risky and those taking the risk can provide themselves some protection. Business owners naturally take risks and seek rewards that benefit them from doing so. Already there are many laws that seek to redress failure by punitively punishing Directors who get it wrong. Those who have to pursue the Directors of failed companies believe they need stronger powers to recover funds from Directors. There is now a strong focus in all businesses on managing their risks. Continued pressure of this nature may

cause Directors to flag away the opportunity to give business a go.

With recent research showing the New Zealand Road Transport needs will increase substantially over the next fifteen years, the industry needs entrepreneurs to develop sustainable businesses that can meet these customer requirements.

In the Truck Journal there are regular stories describing the growth of transport businesses over many decades. We need more people that are prepared to give it a go. To constantly push for more and more Director responsibility will scare away those who have previously had the courage to "put their money on the line". This does not condone operating in a reckless way.

The current legislation allows, if a business fails, Directors to be sued if they have failed in their duty. The proponents of the change to make Directors personally liable for tax say the legislation should be the same in New Zealand as it is in Australia. This proposed legislative framework is called Voluntary Administration. One of the major differences with the draft New Zealand legislation to that of Australia is the priority of the New Zealand IRD remaining. Australian commentators have suggested that this preference (which they traded for

Director responsibility to pay outstanding taxes) has improved the return to the bankers and creditors of a failed company and the IRD has had to pursue the Directors personally.

So what will it be?

We will just have to wait and see what the New Zealand Government decides. Prior to the recent submissions, Government were staunch on maintaining the IRD preferential status.

Business is about taking risk and getting appropriate business structures (limited liability) in place along with appropriate legislation to pursue recovery where the Directors actions have been inappropriate.

New Zealand needs businesses that are creating wealth and employment for owners, employees and customers. The better focus would be to have Directors and business owners who are willing to give it a go and take on the risk (there are lots of risks besides the IRD) to build a sustainable business.

More compliance regulation is unlikely to help Directors to take the risks necessary to meet the future transport needs of New Zealand. **TD**

