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## Entering a Financial Arrangement with IRD to pay off tax

### Obtaining financial relief from IRD

A company or an individual with mounting tax debt need not always be put into liquidation or go bankrupt.

There is provision for taxpayers to apply to IRD for financial relief. This can be in the form of an instalment arrangement to pay off all, or part of the outstanding tax, or for a write-off of some or all the outstanding tax.

### Writing-off tax

IRD will attempt to recover all the outstanding tax. Getting IRD to agree to a tax write-off can be difficult but any agreement will depend on all the circumstances of each particular case. Any agreement to write off tax must comply with IRD's obligation to maximise recovery of the highest net revenue that is practicable within the law.

In some limited instances Inland Revenue will remit penalties and interest. Again any agreement by IRD to do this will depend on the circumstances of the case.

### When will IRD grant financial relief?

When deciding whether or not to accept an application for financial relief IRD has certain legislative obligations to meet. It is required to maximise recovery of the highest net revenue that is practicable within the law. It also has concurrent obligations to protect the integrity of the tax system, to ensure that taxpayers meet their obligations and to promote voluntary compliance with the tax regime.

IRD will consider whether the public interest in collecting taxes is better served by an agreement with the taxpayer rather than by exercising the range of enforcement powers available to it.

In making its decision on whether or not to grant financial relief, IRD will consider a number of issues for example:

- Is the taxpayer in real financial difficulty? This will involve an assessment of the taxpayer's financial position. Can their debts be paid on time? Could their creditors apply to have the taxpayer made bankrupt or put into liquidation?
- Is the taxpayer's proposed arrangement realistic? Is it likely that the taxpayer will be able to comply with the terms of the arrangement? This will involve an assessment of the taxpayer's income and expenses;
- Will the taxpayer be able to pay all future tax liabilities in addition to the proposed instalment arrangement?
- What is the tax history of the taxpayer? Past tax compliance is very important. Has the taxpayer had any previous instalment arrangement? If so, was the arrangement adhered to?
- Has the taxpayer filed all returns?

## The High Court's decision in the Commissioner of Inland Revenue v Bioletti [2013] NZHC 2131

IRD applied to have Mr Bioletti, a barrister made bankrupt. IRD had obtained judgment against Mr Bioletti for more than \$300,000 for unpaid GST and income tax. However, at the time of filing its application for an order for bankruptcy Mr Bioletti owed IRD more than \$500,000.

At the bankruptcy hearing Mr Bioletti contended that it was not just and equitable of the Court to order his bankruptcy as he was able to make an immediate lump sum payment in reduction of the debt and he had the means to make payments by instalments in order to repay the entire debt over time.

The Court determined that Mr Bioletti's proposal to pay the debt was flawed as it failed to take in to account his current tax liability. The Court noted that IRD had rejected an earlier proposal given by Mr Bioletti on the grounds that he had a poor compliance history and he had not shown the ability to voluntarily comply.

Mr Bioletti argued that IRD had an obligation to maximise recovery of the highest net revenue that is practicable within the law and that it had failed to meet that obligation by rejecting his offer to make an immediate payment of \$180,000. He said that that payment would not be available in the event he was made bankrupt.

The Court recorded that the obligation to maximise revenue is one part of IRD's obligations under the TAA. IRD also has concurrent obligations to protect the integrity of the tax system, and to promote compliance with the tax regime.

In making Mr Bioletti bankrupt the Court noted the following points:

- IRD was justified to be concerned that the tax debt was so high;
- Mr Bioletti's failure to meet his tax obligations went back over a number of years;
- Mr Bioletti failed to keep his tax affairs current during the period he was negotiating with IRD;
- The proposal put forward by Mr Bioletti appeared to be hopelessly optimistic.

This case is a good example of why it is important to act quickly when faced with tax debt. Any delay will only make matters worse.

Our firm has been very successful in negotiating settlements for clients with IRD. If you are concerned over your tax debt or have been served with Court proceedings or a statutory demand by IRD then please contact us.

Graeme Withers and Julie Withers of Graeme Withers Law are experienced [tax lawyers](#) who can help you. Please contact Graeme on (04) 478 4889 or (027) 715 5421 or Julie on (04) 478 4888 or (027) 478 4888 or by email [info@witherslaw.co.nz](mailto:info@witherslaw.co.nz)

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