

Regulatory Impact Statement

Liquidators and receivers changing GST accounting basis

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Inland Revenue.

The question in this Statement is whether liquidators and receivers should be able to change from the payments to the invoice basis when accounting for GST. The main objective is to ensure that liquidators and receivers are not able to engage in tax driven behaviour to generate GST refunds to the detriment of the Government's tax base.

Other than set out in this Disclosure Statement and the broader Regulatory Impact Statement, no significant gaps, assumptions, dependencies, constraints, caveats or uncertainties have been identified. Officials have consulted with the relevant industry body, INSOL, and the Treasury. Given the technical nature of the issue and its small stakeholder group, wider public consultation has not been undertaken.

In preparing this Statement, we have consulted with the Treasury, which agrees with our analysis.

The proposed change will not impose any compliance costs on liquidators or receivers.

The proposed change does not impair private property rights, reduce market competition, provide disincentives to innovate and invest or override common law principles.



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STATUS QUO AND PROBLEM DEFINITION

1. The question in this Statement is whether liquidators and receivers should be able to change from the payments to the invoice basis when accounting for GST.
2. If a registered person meets certain conditions, for example, the total value of taxable supplies for a 12 month period has not, or is not likely to exceed \$2,000,000, the registered person may account for GST on a payments basis. The Goods and Services Tax Act 1985 allows registered persons who are accounting for GST on a payments basis to change to the invoice basis by applying to the Commissioner. There are currently no restrictions on registered persons making this accounting basis change.
3. The large majority of registered persons choose to account for GST on a payments basis because it suits their business needs.
4. It is normal practice for liquidators and receivers to switch the GST accounting basis of registered persons they are acting for from the payments basis to the invoice basis. Changing from the payments to the invoice basis often results in refunds being made to the liquidator or receiver despite in many cases there being no realistic prospect that the debt, to which the input credit relates, will ever be paid. Even though output tax is also recognised on an invoice basis when the accounting basis is switched, Inland Revenue's statistics show that liquidators and receivers consistently receive net refunds when they make the switch.
5. For example, in the period 1 January 2009 to 30 July 2010 there were 627 companies where the liquidators requested a change from the payments basis to the invoice basis – the amount of GST claimed by these liquidators on switching accounting basis was approximately \$4.5 million, whereas the output tax returned was approximately \$550,000.
6. Although companies not in liquidation or receivership can similarly change their GST accounting basis, this is not considered an equivalent problem because such persons who stay in business eventually come into a net paying position.
7. Officials also note that it is not the policy intent of the GST legislation that refunds obtained by changing GST accounting bases be used to fund the liquidation or receivership of private companies.
8. The problem, therefore, is liquidators or receivers engaging in tax driven behaviour in order to generate GST refunds, which is at the detriment of the Government's tax base.
9. This Statement considers whether the Goods and Services Tax Act 1985 should be amended to preclude liquidators and receivers switching from the payments basis to the invoice basis when accounting for GST.

OBJECTIVES

10. The main objective is to ensure that liquidators and receivers are not able to engage in tax driven behaviour to generate GST refunds to the detriment of the Government's tax base.

REGULATORY IMPACT ANALYSIS

11. The options that we have identified include retaining the status quo or amending the Goods and Services Tax Act 1985 to preclude liquidators and receivers switching from the payments basis to the invoice basis when accounting for GST.

12. The preferred option is to amend the Goods and Services Tax Act 1985 to preclude liquidators and receivers switching from the payments basis to the invoice basis when accounting for GST in order to generate GST refunds. The amendment should also apply to voluntary administrators.

13. Officials considered other options including making the change of accounting basis subject to Commissioner discretion and amending the incapacitated persons provisions in section 58 of the GST Act 1985. These options were disregarded because a discretion would be arbitrary in nature and the incapacitated persons provisions have a might wider ambit than liquidators and receivers.

14. The impacts of the preferred option are:

	Impacts		Comment	Net Impact
	<i>Costs</i>	<i>Benefits</i>		
Liquidators/ Receivers	\$2.5 million less tax refunded.	Marginally reduced compliance costs as no longer making a change in accounting basis.	Approximately 400 companies going into liquidation each year could be affected by this proposal.	Negative
Government	None.	\$2.5 million per annum.	GST no longer inappropriately used to fund liquidation or receivership of private companies.	Positive

CONSULTATION

15. Officials have discussed the amendment with representatives from INSOL (a group representing insolvency practitioners). The group considered the GST refunds were used to investigate companies, which could result in higher returns to creditors and therefore supported the status quo. It is not the policy intent of the legislation that GST refunds obtained by changing GST accounting bases be used to fund the liquidation or receivership of private companies.

16. Inland Revenue has also consulted with the Treasury who agree with our recommendation.

CONCLUSIONS AND RECOMMENDATIONS

17. The recommended option is to amend the Goods and Services Tax Act 1985 to preclude liquidators and receivers switching from the payments basis to the invoice basis when accounting for GST.

IMPLEMENTATION

18. The necessary legislative change will be included in the tax bill scheduled to be introduced in September 2011, with application to payments made on or after the date of

enactment. There is no need for transitional provisions. No implementation risks have been identified. Implementation can be managed within existing systems.

MONITORING, EVALUATION AND REVIEW

19. There are no plans to monitor, evaluate and review the GST treatment of liquidators and receivers following this amendment. If any specific concerns are raised, officials will determine whether there are substantive grounds for review under the Generic Tax Policy Process. Also, the Goods and Service Tax Act 1985 is subject to regular review by officials.