

AUSTRALIAN TAX REVIEW

Volume 52, Number 2

2023

EDITORIAL – *General Editors: Dale Pinto and Kerrie Sadiq*

Tax Administration – Evolution or Revolution? 41

SPEECH

Tax Administration: Evolution or Revolution – *Jeremy Hirschhorn* 43

ARTICLES

Directors’ Liability for Unpaid Company Tax in Australia: Revisiting the Case for Reform – *Richard Krever*

An exception to the most sacrosanct feature of company law, the opaque corporate veil, applies to directors of companies that have failed to remit taxes that have been withheld from payments to third persons, including employees’ salaries. Replacing an earlier crown priority for debts owed to the government by bankrupt individuals and liquidating companies, tax law now creates a personal liability of directors for non-remitted taxes that were withheld from payments to third parties. In recent years, this personal liability has been extended to primary obligations of companies to remit amounts related to their superannuation and goods and services tax responsibilities. Extending directors’ personal liability to include primary company income tax would be a logical extension of the policy underlying the current rules. 52

Is Unpaid Tax the Canary in the Coalmine? An Examination of Stakeholder Benefit from Quicker Action on Tax Debt in Aotearoa New Zealand, Informed By Australia and Ireland – *Lisa Marriott*

This article makes a case for Aotearoa New Zealand’s Inland Revenue (IR) to adopt quicker debt collection practices. The study questions whether the non-payment of taxes is the “canary in the coalmine” that signals a business is no longer viable. Tax debt is high and increasing in Aotearoa New Zealand, where IR initiates most liquidations. Quicker action by IR is likely to result in fewer impacted stakeholders when an unviable company eventually enters liquidation. Several debt management options used in Australia and/or Ireland are canvassed throughout the article including publishing the names of indebted taxpayers, using debt collection agencies to collect outstanding tax debt, passing debtor names to credit rating agencies and passing liability for some company tax debts on to company directors. An escalating suite of tools is proposed to address the increasing number of liquidations and tax debts. Quicker action when tax debts are unpaid results in less financial vulnerability for suppliers, employees and other company creditors. In addition, there is less negative impact on the integrity of the tax system, where debtors to the tax authority potentially gain trading advantages that their competitors do not. 71

