

# S 16B

## STATEMENT OF INSOLVENCY PRACTICE TAXATION MATTERS OF PRACTICE

### Contents

	<i>Paragraphs</i>
Introduction	1 – 2
Agreement of Revenue claims	3 – 5
Self-assessment	6 – 7
VAT	8 – 9
Excise	10
Set-off	11
Funding policy	12-16
Selection of liquidators	17-18
Conduct of liquidators	19-20
Effective date	21
Appendix: Reference material	

# **S 16B**

## **STATEMENT OF INSOLVENCY PRACTICE**

### **TAXATION MATTERS OF PRACTICE**

#### **INTRODUCTION**

1. This Statement of Insolvency Practice is one of a series issued by the Institute of Certified Public Accountants in Ireland to insolvency practitioners with a view to maintaining standards by setting out required practice and harmonising members' approach to particular aspects of insolvency practice.
2. The purpose of Statements of Insolvency Practice is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standards set out in the Statements of Insolvency Practice is a matter that may be considered by the Institute for the purposes of possible disciplinary or regulatory action.

#### **AGREEMENT OF REVENUE CLAIMS**

3. The Revenue Commissioners ("The Revenue") confirms that Inspectors of Taxes have been instructed to deal with returns and other submissions related to insolvency situations without delay.
4. Where the insolvency practitioner stipulates those Revenue claims, or portion of claims, to which particular payments are to be set against the Revenue will follow that stipulation.
5. Where monies are remitted in respect of a number of Revenue claims across various tax heads, without specific direction from the insolvency practitioner, such payments will be apportioned on a pro-rata basis across the taxes within the class to which they refer. Such appropriation will be detailed on the receipts issued for those remittances.

#### **SELF-ASSESSMENT**

6. Where, based on available information, the Revenue does not intend to take audit or other action regarding the pre-insolvency submissions by the company concerned, it will so inform the insolvency practitioner. If the case is being noted for Revenue audit the insolvency practitioner will be so advised. A similar approach will be adopted in respect of returns and other submissions relating to the period of the insolvency practitioner's appointment.
7. The Revenue emphasises that this clearance procedure will not cover situations where underpayment of taxes has arisen because of fraud or malpractice by directors of the company or by the insolvency practitioner.

#### **VAT**

8. Applications by liquidators for VAT registration will be accepted by the Inspector of Taxes where he or she is satisfied that there are significant taxable supplies (involving a positive VAT charge) to be disposed of. The VAT number issued will remain valid for the duration of the liquidation.
9. The liquidator will be asked to submit a copy of the opening Statement of Affairs, together with any necessary details of the company's assets, in support of the application for VAT registration

# S 16B

## STATEMENT OF INSOLVENCY PRACTICE

### TAXATION MATTERS OF PRACTICE

#### EXCISE

10. The Customs authorities will facilitate liquidators in relation to:
  - (i) the issuing of liquor licenses in respect of what were licensed premises, being the property of a company now in liquidation; and
  - (ii) the repayment of Vehicle Registration Tax, where a claim is made by a company in liquidation which had carried on a car hire or coach tour business.

#### SET-OFF

11. Section 1006A of the Taxation Consolidation Act, 1997, deals with the question of set off between different taxes. This Section has been amended by Section 239, Finance Act, 2001, to extend the definition of tax liability to include interest.

#### FUNDING POLICY

12. The Revenue will consider giving a guarantee of funds to a liquidator where it considers there are good prospects of a sufficient return to it as creditor so as to justify the risk exposure in commercial terms.
13. It will also consider giving a guarantee of funds where there are grounds for taking action against directors or other officers of the company e.g. "phoenix cases" and in Court liquidations where the Revenue is the petitioner.
14. It is important that the insolvency practitioner has prepared an assessment of the company's recovery prospects, or of the action to be taken against directors, including legal advice where relevant, prior to approaching the Revenue with a request that it fund the liquidation.
15. The insolvency practitioner should agree the basis for fees and expenses with the Revenue prior to taking on an assignment in which the Revenue is going to guarantee some or all of the funding.
16. Once a Court liquidation has been initiated, the Revenue view is that it should proceed to finalisation. Where there are no assets and no further action is feasible, an application, with the support of the Revenue in its capacity as representative creditor, should be made to the Court for either a Final Order, or for an Order staying proceedings under Section 234, Companies Act, 1963.

#### SELECTION OF LIQUIDATORS

17. The criteria implied by the Revenue when selecting liquidators are:
  - Practitioner's own tax position up to date;
  - Practitioner's professional firm's tax position up to date;
  - Independence of person;
  - Geographical proximity to liquidated company;

# **S 16B**

## **STATEMENT OF INSOLVENCY PRACTICE**

### **TAXATION MATTERS OF PRACTICE**

- Complexity of case and ability of practitioner to handle it;
  - Level of fees charged.
18. The Revenue will very occasionally consider proposing an alternative practitioner in a Court liquidation.

### **CONDUCT OF LIQUIDATORS**

19. The Court regards the Revenue as a representative creditor. In this capacity the Revenue will take whatever action it considers appropriate to ensure that existing/proposed liquidators act in accordance with their statutory duties. This may also involve the Revenue initiating action or passing information to the Office of the Director of Corporate Enforcement.
20. The Revenue may also raise with the relevant professional body circumstances where a liquidator is guilty of professional misconduct.

### **EFFECTIVE DATE**

21. This Statement is effective from 1st May 2005.

## Reference material

### “TAX BRIEFING”

1. Self-assessment procedures for tax returns of companies in liquidation. July 1992, page 1.
2. Corporation Tax returns by liquidator. May 1994, page 4.
3. Professional Service Withholding Tax – PSWT. June 1996, page 15.
4. Retirement Relief (Section 26, Capital Gains Tax Act, 1975) in the context of the liquidation of a company. April 1997, page 10.
5. Irish registered non-resident companies – IRNRs. October 1999, page 6.
6. Revenue policy relating to liquidations. December 2000, page 22.
7. Offset of repayments Regulations. October 2001, page 10.
8. Retention of tax records in electronic format, December 2003, page 24.