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**PATRON : David Russell**

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Compliance and Penalties Review  
The General Manager  
Policy Advice Division  
Inland Revenue Department  
PO Box 2198  
WELLINGTON

Dear Sir

**Taxpayer Compliance, standards and penalties: a review**

This submission addresses the Government proposals on Debt and Hardship as presented in Chapter 3 of the Government discussion paper.

I acknowledge the changing thrust that is evident in these proposals and believe that not only could they lead to a more equitable approach but they could also produce a greater return of unpaid taxation. Clearly if a taxpayer has the means to pay the taxation liability and chooses to avoid, evade or delay this then the full weight of penalties and costs should be applied. If a taxpayer cannot afford to pay then, as the discussion paper envisages, it is best to get whatever return is available and to accept that none may be possible.

I have reservations however about the process that may be used to achieve this. I detect an apparent supposition throughout that Inland Revenue has first priority in respect to debt and is placing itself above and beyond the existing legal remedies available to other creditors for recovery. As such the Inland Revenue Department could be seen to be continuing in its "big brother" non-negotiable position of authority. I further believe that the current proposals over emphasise the punitive nature of bankruptcy to people who have little to lose. This is backed up by proposals being promoted in other arms of Government to remove the stigma normally associated with bankruptcy for non-business situations.

If unpaid taxation, of all types, were treated similarly to other financial liabilities, then from the perspective of a trained budget adviser, it would be dealt with in a process something like this:

1. Debtor seeks advice on financial matters from the budget service.
2. Budget Adviser establishes income, expenditure and liabilities of debtor.
3. Budget Adviser projects this information into a weekly budget and cash flow.
4. Budget Adviser guides debtor to identify individual priorities, obligations and consequences of decisions (incurred interest, court proceedings, credit rating, etc.).
5. Budget Adviser and Client negotiate with legal creditors for debt repayment after agreeing an amount for ongoing living costs.

6. Budget Adviser

- a) reworks budget and cash-flow to implement the budget and negotiated payments, or
- b) establishes a creditors pool (an informal proposal but similar to Part XV of the Insolvency Act 1967), or
- c) assists in an application to the District Court for a Summary Instalment Order and offers ongoing budgeting advice, or
- d) assists the debtor to file for bankruptcy and assists the debtor to grasp budgeting principles to minimise a recurrence.

As the discussion paper identifies, bankruptcy ought to be the last option and some recovery is better than none at all in most circumstances. This Federation's underlying values are based on the presumption that people should have the skills necessary to be responsible for financial affairs and those who can afford to meet their commitments should not be able to easily abandon them. The means of achieving this lie in incentives and achievable goals and the Federation totally supports the proposals to provide incentives to improve an individual's financial position without facing re-instatement of a debt. Bankruptcy is not regarded as a convenient process for disposing of an uneconomic case but as a last resort when there is inadequate income and asset to offer some degree of repayment.

There exists in the discussion paper the continued right of Inland Revenue to be the sole adjudicator. This view is clearly re-inforced in the attempt to define "serious hardship". (paragraph 3.35 - 3.36). As currently drafted it raises more questions than it answers. For example:

- Who would define "normal community standards"? The potential problems are apparent in the anomalies between paragraph 3.32 and paragraph 3.35.
- What account is had to other liabilities and other creditors' rights to expect some recovery?
- Who decides an individual's priorities and values?
- Is Inland Revenue able to differentiate the appropriate personal, cultural and religious values of any one individual in deciding what are basic requirements?
- Whose judgement decides the point at which a taxpayer begins to suffer serious hardship?
- Is this process intended to be transparent, contestable or reviewable to higher authority?

Past experiences with Liable Parent Contributions and currently Child Support should be obvious examples of the administrative burden of exercising and defending judgement calls on the merits of hardship.

Other creditors using established legal processes will rely on a Court of Law (in the case of A Summary Judgement or A Summary Instalment Order) or will consider an independent appraisal (such as by a budget adviser) in determining the rate and amount of repayment. By giving itself this, role Inland Revenue opens itself to continued criticism and suspicion, without necessarily achieving greater rates of recovery or lesser administrative costs. By insisting on imposing use-of-money interest "to ensure the taxpayer is not rewarded for any delay in payment" negates any recognition of hardship justifying any write-off. In the comparable consumer situation, all proceedings, including interest charges, are stayed by a Summary Instalment Order.

It is the submission of this Federation that having made the realistic decision to accept the inevitability of part or no payment from low asset-low income debtors, Inland Revenue should complete the cycle and place itself on the same footing and same provisions of other creditors. It should not lumber itself with a legislative interpretation of hardship and it should allow for judgements of that nature to be left to independent adjudicators or appraisers. It should adopt common business risk methodology in accepting partial payment and write off permanently the debt that it cannot recover in a specified period of say three years.

Yours sincerely

Raewyn Nielsen  
Executive Officer