

The Role of the Commissioner as a General Unsecured Creditor in a Corporate Insolvency

Sylvia Villios, Adelaide University, sylvia.villios@adelaide.edu.au

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Abstract

There are numerous parties who play a part in a corporate insolvency, and whose interests need to be accommodated. With tax claims representing the most common precipitant of a corporate insolvency, the Commissioner of Taxation is one such party. The Commissioner's role in a corporate insolvency is further pronounced as new forms of taxation have been created and tax rates have increased leading to tax claims consuming more and more of an insolvent debtor's estate. This raises questions such as what role should the Commissioner play in times of economic distress? Should the Commissioner be granted tax priority in a corporate insolvency? What level of administrative and enforcement powers should the Commissioner have available to enforce the tax law? To what extent should the Commissioner offer assistance to financially troubled businesses, thereby smoothing consumption and absorbing economic shocks? What form should such intervention, if any, take? These types of questions are at the centre of the ongoing debate over the appropriate role of the Commissioner in a corporate insolvency.

The literature which considers the role of the Commissioner in a corporate insolvency is predominantly concerned with two issues. The first issue is whether the Commissioner should be given preferred treatment relative to other creditors. That is, in a corporate insolvency should such claims be paid ahead of other unsecured, and in some cases also secured, claims. The second issue considers the appropriate level of enforcement powers that should be available to the Commissioner in exercising his role in administering the tax law as a creditor in a corporate insolvency.

This paper will consider the role of the Commissioner as a creditor in a corporate insolvency. In particular, the paper will consider whether the Commissioner should be given preferred treatment relative to other creditors.

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