

## Addisons FocusPapers

---

### **Update – Liquidators will be personally liable for GST**

Since our FocusPaper of 18 December 2008 regarding the case of *Deputy Commissioner of Taxation v PM Developments Pty Ltd* [2008] FCA 1886 (“**Case**”) which held that liquidators are not personally liable for GST on post-appointment transactions, the Assistant Treasurer has announced that GST legislation will be amended to make it clear that representatives of incapacitated entities are liable for GST on post-appointment transactions. The amendments will have retrospective effect from 1 July 2000, the date of the commencement of the GST.

The Tax Office has also issued a Decision Impact Statement on the Case. The Tax Office accepts that as a result of this Case, the representative of an incapacitated entity is not personally liable for GST, and that that will remain the law until the proposed amendments are passed.

Accordingly, until the amendments are passed, the Tax Office accepts that the liability for GST on transactions entered into by a representative of an incapacitated entity as agent for the entity is satisfied if the liability is “paid by or on behalf of the incapacitated entity.”

If amending legislation is passed, the Tax Office will accept that the GST liability is satisfied where:

- the correct amount of GST has been paid by the representative on behalf of the entity in the period pending the amending legislation being in force;
- the representative (on behalf of the entity) authorises the Tax Office to treat the amount as paid on behalf of the representative; and
- no claim for the amount paid is made against the Tax Office,

without further action by the representative.

The Tax Office is seeking feedback on this approach and any other issues arising from the Case and the Decision Impact Statement.

Representatives will not be liable for penalties or general interest charge if the GST is paid within 28 days after the amending legislation receives Royal Assent.



# Addisons FocusPapers

---

In relation to representatives who personally paid GST to the Tax Office as a result of the Case, the Tax Office will process applications for refunds, pending the amendments being passed. The representative will have to demonstrate that the payment was made personally rather than on behalf of the incapacitated entity. For full details on a representative's entitlement to refunds, please see the Decision Impact Statement.

**For more information please contact:**

**Phil Stern, Partner**

Telephone: +61 2 8915 1096

Facsimile: +61 2 8916 2096

Email: [phil.stern@addisonslawyers.com.au](mailto:phil.stern@addisonslawyers.com.au)

**Peggy Wong, Solicitor**

Telephone: +61 2 8915 1023

Facsimile: +61 2 8916 2023

Email: [peggy.wong@addisonslawyers.com.au](mailto:peggy.wong@addisonslawyers.com.au)