


IT 2322 - Income Tax : indemnity of trustees in insolvency cases

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TAXATION RULING NO. IT 2322

INCOME TAX : INDEMNITY OF TRUSTEES IN INSOLVENCY CASES

F.O.I. EMBARGO: May be released

REF H.O. REF: J206/7/2 DATE OF EFFECT: Immediate
J206/6/3

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1209292 INSOLVENCY
BANKRUPTCY
LIQUIDATION
OFFICIAL RECEIVERS ETC
INDEMNITY

PREAMBLE This Office has recently considered the question of indemnities provided to trustees in insolvency cases for costs, charges or expenses which will be incurred in the course of legal recovery proceedings on behalf of creditors. The word "trustee" is defined in section 6 of the Income Tax Assessment Act, 1936 and includes, for the purposes of this Ruling, a provisional liquidator.

2. This Ruling sets down guidelines concerning the terms under which an indemnity should be approved by the Taxation Office where the Commissioner is either the sole or a participating creditor.

RULING 3. Where the costs of any recovery action are not likely to exceed the amount that is recoverable by a trustee an indemnity may be provided to the trustee upon request.

4. Where a trustee requires an indemnity it is normal for the trustee to seek the indemnity from all creditors in proportion to their respective claims. To the extent that the creditors other than the Commissioner do not agree to indemnify the trustee the Commissioner should, in providing the indemnity, seek an order, under section 109 of the Bankruptcy Act or section 450 of the Companies Code, for an advantage over other creditors.

5. In accordance with the Commissioner's longstanding practice, indemnities for proposed recovery actions are to be limited to the specific action or actions identified by a trustee as necessary or essential. Trustees should be informed, particularly where considerable costs may be involved, that the Taxation Office reserves the right to consider whether it will consent to indemnify a trustee in relation to any proposed action or actions before any indemnity is granted. Unlimited indemnities will not be granted. However, indemnities which are

specific as to the action or actions agreed to will embrace those actions and factors incidental to them. The same approach will be taken in considering any extended or further indemnities requested by trustees for proposed actions on behalf of creditors.

6. The requirement that a trustee identify proposed recovery actions before indemnities are granted is founded on the view that the Commissioner has a public duty to ensure the proper and efficient use of public moneys. Accordingly, there is no substance to any suggestion that such requirement is intended to be a form of interference or intervention in matters which fall properly and solely within the responsibility of a trustee.

COMMISSIONER OF TAXATION
25 June 1986

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