

Parliamentary Joint Committee, Corporations and Financial Service

Corporate Insolvency in Australia

ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Registered liquidator and pre-insolvency advisor practices
Senator: Senator Deborah O'Neill

Question:

CHAIR: Finally, you talk about how important it is that there is ethics involved in the action of registered liquidators, and then you make a comment about pre-insolvency advisors. Critically, the accounting bodies CPA, CA ANZ and I expect the Tax Practitioners Board are involved in that. Given the level of concern about very dodgy- to use a very technical term- practices by pre-insolvency practitioners, I would be interested in getting the ATO's view about what you're seeing with regard to that and seeking your comfort- and comfort from ASIC as well, because you interact with those bodies- that there is sufficient notice being taken of a burgeoning business of pre-insolvency practitioners-

Mr Day: I don't think it's fair to say it's burgeoning. It has been something that, though Phoenix Taskforce and others, we've been looking at for a number of years. I won't say that the market is mature, Senator, but we're happy to take it on notice and give you a look at what the activities separately and together have been in relation to pre-insolvency advisors and what the difficulties have been but also what the success have been.

CHAIR: Of the whole scheme?

Mr Day: Yes.

CHAIR: I note that, in your opening statement, you indicated that you're keeping your fingers on the pulse, literally, of what's happening. It would be interesting to understand how successfully these pre-insolvency practitioners are operating and how that's compromising the fair tax that all Australian businesses and 'pay as you go' owners should be paying. The last thing we want, which I think is what the AMWU might have had in their submission in relation to construction, is a statement that businesses thrive on using everybody else's money in that sector, and it shouldn't be the Australian taxpayers' money any more than it should be unsecured creditors' money. So, in the light of that observation, I seek your input on pre-insolvency advisors and your sense of integrity of the current registered liquidation model.

Answer:

It is the ATO's view that the majority of registered liquidators act ethically and professionally. However, a small proportion choose to do the wrong thing and provide bad advice to businesses. When we identify this type of behaviour, we refer these matters to ASIC as the regulator for registered liquidators. We also take action to address any business or personal tax risks relating to the registered liquidator and their associates. This can include tax assessments, criminal investigations and prosecution and proceeds of crime action.

In October 2021, the Serious Financial Crime Taskforce finalised an intelligence program that identified approximately 200 suspected high risk pre-insolvency advisers (mostly operating outside the regulatory regime). Since October 2021 we have continued to evaluate new intelligence and information sources. This continuing assessment by the Serious Financial Crime Taskforce has not led to the identification of a significant growth (or decrease) in the number of high risk pre-insolvency advisers.

The ATO also works through the Phoenix Taskforce and the Serious Financial Crime Taskforce to target pre-insolvency advisers who facilitate illegal phoenixing. (Phoenix Taskforce results have previously been provided to the Committee in response to ATO question 14).

Where we identify high risk pre-insolvency advisers, we work through the above mentioned Taskforces to apply multi-faceted compliance activities and criminal treatments including tax assessments and penalties, and criminal investigations and prosecution. Over the last three years the ATO has finalised three operations and has another four current operations on hand.

A recent joint ATO and ASIC operation resulted in a pre-insolvency advisor being sentenced to five years in prison after pleading guilty to one charge of dealing in the proceeds of crime. Another joint ATO and ASIC operation has resulted in a pre-insolvency advisor currently facing 13 criminal charges; four charges of obstruction of Commonwealth officials and nine charges for dishonestly causing a loss to the Commonwealth.