

28 February 2020

Unclaimed Money
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
Wellington

By email: policy.webmaster@ird.govt.nz

Re: Unclaimed money – a tax policy consultation document

Introduction

The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the tax policy consultation document: *Unclaimed money* (consultation document).

The proposals in the consultation document aim to make it easier for people to claim money and reduce costs for unclaimed money holders. Proposed changes include removing the need to maintain physical registers; reducing the period of time before money is deemed unclaimed; and improving Inland Revenue's ability to match unclaimed money with people. The proposed changes are welcomed and long overdue.

The Law Society has sought assistance from members of its Commercial and Business Law committee and makes the following general comments. These general comments are intended to assist officials to design a better functioning unclaimed money regime. If any further substantive changes are proposed outside the consultation document, those proposals should be subject to further consultation.

The Law Society's Regulatory team also provided comments in relation to the Lawyers and Conveyancers Act 2006, and these are set out separately below.

General comments

Modernising the practical operation of the Unclaimed Money Act 1971 (Act) is necessary and overdue. The Act is outdated and difficult to for users to navigate. The consultation document captures the difficulties of using the outdated regime, including the changed technological world in which money is now handled and stored, and the time limits which make it difficult for practitioners, banks and other "holders" of money, particularly in a liquidation context. We therefore agree that modernising the practical operation of the Act in order to incorporate the operation of modern information technology is essential.

Allowing use of modern information management tools will assist significantly with achieving the Act's statutory purpose. That purpose, set out clearly by the Supreme Court in *Westpac Banking Corporation and Ors v CIR*¹ is, essentially to identify "unclaimed money", try and find its rightful owner and, if that isn't possible after a certain period of time, (generally) to pool that money into a

¹ *Westpac Banking Corporation and Ors v CIR* [2011] NZSC 36.

central repository for safe-keeping by the Crown. The Act is now nearly 50 years old, drafted at that point in time and, unsurprisingly, many of its practical and administrative aspects reflect a bygone era. Therefore, changes to the regime to allow for modern and commonplace means of information storage and distribution are necessary.

We see merit in the proposal to define the Act as an Inland Revenue Act under the Tax Administration Act 1994. The consultation document explains that this will enable (and allow) Inland Revenue to use the information that it holds, improve its matching ability and reduce its administration costs. If Inland Revenue is better able to identify rightful owners of unclaimed money where the bank (or other holder) has failed, (and using information Inland Revenue holds), this should assist in reducing the amount of time that “holders” of unclaimed money must keep the money before sending it to Inland Revenue.

The consultation document seems to indicate that Inland Revenue will be bolstering its role within the unclaimed money regime. It would be helpful for both “holders” of money and practitioners if regulators consider issuing some practical guidance on how the Act operates.

Regulatory comments

Overview

The processes and legislation associated with unclaimed money are relevant to all lawyers who hold a trust account in New Zealand. We have outlined below some administrative issues that arise for lawyers, in the context of the trust account requirements under the Lawyers and Conveyancers Act 2001 (LCA).

There are currently 1350 lawyers’ trust accounts in New Zealand. A lawyer’s trust account is defined as in relation to any practitioner or firm, “any trust account at a bank in New Zealand that is a trust account in the name of practitioner or firm.”² Lawyers’ trust accounts are regulated under the Lawyers and Conveyancers Act 2006 (LCA) and regulations (Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (Trust Account Regulations)). The Law Society carries out its regulatory responsibilities in respect of lawyers’ trust accounts through its Inspectorate and Lawyers Complaints Service.

Trust account process

A lawyer who receives client funds in the course of their practice must immediately pay the funds into a designated lawyers trust account.³ A lawyer must not deal with client funds other than in accordance with specific client authority or the provisions of the LCA and Trust Account Regulations. Lawyers have an obligation annually and on completion of a matter, to provide the client with a statement of all trust funds dealt with and the balance remaining.⁴

Unless otherwise directed, a lawyer has an obligation to pay clients the balance of funds held after completion of a matter (see: Lawyers Trust Account Guidelines p.17). However, there may be situations where it may not be possible for the lawyer to locate accurate contact and bank account details for a client. Section 337 of the LCA specifically deals with unclaimed money in a trust account. Where a lawyer cannot find a person on whose behalf money is held and the lawyer does not have authority to make payment to any other person, the lawyer must follow the process set out in

² Lawyers and Conveyancers Act 2006, section 6.

³ Ibid, at section 110.

⁴ Lawyers and Conveyancers Act (Trust Account) Regulations 2008, rule 12(7).

section 337. The process includes paying the funds to the Commissioner of Inland Revenue as unclaimed money, if the lawyer thinks fit.

Section 337 provides:

337 Unclaimed money in trust account

- (1) This section applies to—
 - (a) money that is held in a regulated trust account by a lawyer or incorporated law firm;
 - (b) money that—
 - (i) has been paid, under section 164(2), to a Standards Committee or the New Zealand Law Society or the New Zealand Society of Conveyancers; and
 - (ii) is still held by the committee or society to which it was so paid.
- (2) Where any money to which this section applies is held on behalf of a person who cannot be found and has no known agent with the authority to receive the money, the person by whom the money is held may, if that person thinks fit, pay the money to the Commissioner of Inland Revenue and send to the Commissioner particulars of the payment and of the person on whose behalf the money was held; and the person by whom the money was held is thereupon relieved from all further liability in respect of the money so paid.
- (3) All money paid to the Commissioner of Inland Revenue under this section is to be deemed to have been so paid as unclaimed money, and section 11 of the Unclaimed Money Act 1971 is to apply to it.
- (4) Where a person has paid any money to the Commissioner of Inland Revenue under this section, the Commissioner may at any time require that person or any other person to give to the Commissioner all such information as the Commissioner may require in relation to the ownership of the money, including information as to the steps taken to trace the person on whose behalf the money was held.

Although it is not mandatory under section 337 to pay funds to Inland Revenue as unclaimed money, there is no other practical avenue for lawyers in cases where client authority is not held for payment to any other third party. One barrier to using the unclaimed money process which arises, is that dormant balances may well be for small amounts under the current \$100 threshold. We are aware that Inland Revenue has noted in the past that it has received payments from lawyers below the threshold and this raises administrative efficiency issues for Inland Revenue.

Lawyers would welcome any improvements to the current system for payment which increases administrative ease and convenience.

Conclusion

The Law Society is happy to discuss these comments further with officials if that would assist. The convenor of the Society's Commercial and Business Law Committee, Charlotte McLoughlin, can be contacted via Law Reform Adviser, Emily Sutton (Emily.Sutton@lawsociety.org.nz).

Yours faithfully



Andrew Logan
Vice President