

***Summary of major concerns raised by respondents to the original consultation***

The major concerns raised by respondents as respects the original consultation proposals can be broadly summarised as follows:

- **Proposals involve significant changes in policy** – Revenue would be granted priority over other creditors including secured creditors, which could have wide-ranging adverse commercial consequences for lenders’ capital and reserves.
- **Security held by lenders would be severely diluted** – secured lender would be required to bear and account for increased amount of the tax liability that should ordinarily be payable by the borrower which would increase loan losses of banks.
- **Creates distortions** – borrower enjoyed the benefits from holding the asset but the lender becomes liable for any future tax arising from holding/selling the asset.
- **Significant departure from generally accepted tax principles** that a taxpayer should generally be responsible for his or her own tax affairs.
- **Inequitable** – taxation of the receiver is without reference to the historical position of the borrower which would deny the use of losses forward etc.
- **Adverse commercial consequences for lender** - proposals could result in the secured lender becoming liable for tax liabilities that may not exist if no enforcement action was taken. Decisions as to whether to enforce or not could be dictated by the possibility of additional tax liabilities associated with the enforcement action. Inhibiting potential property disposals in this manner is undesirable in the current market.
- **Encourage dysfunctional behaviour on the part of certain borrowers** - certain borrowers may cease cooperating with the lender and be motivated by a desire to retain the benefit of tax losses (Consultation proposals 1 & 2) or to avoid tax incentive claw-backs (Consultation proposal 2). This would interfere with normal lender/borrower relationships and could encourage defaults and non-compliance with lenders.
- **Major impact on property rights of lenders** and would possibly involve unjust enrichment of the State. By taking measures to recover monies advanced, a liability of the borrower is shifted to become liability of the lender/receiver who did not benefit from the original reliefs.
- **Substantial information gaps would remain** – which would continue the difficulties currently being experienced by lenders/receivers

- **Minimal tax exposure in most receiverships** – a receiver is appointed to a business that cannot “pay its way” and, generally, has accumulated losses over several years. Experience suggests that there is minimal tax exposure in most receiverships. A change to generally accepted tax principles as proposed should only be contemplated if there is evidence of significant tax risk to the Exchequer.
  
- **Revenue’s stated position regarding s96(3) and balancing events/claw-backs (i.e. that they become the responsibility of the lender/receiver)** is not a view that is universally accepted. Some respondents believe that a section 23 claw-back does not attach to the property and, therefore, that there are strong grounds for contending that it does not become the liability of the lender.
  
- **Respondents dispute the assumption that a receiver appointed over assets of a company will be in control of the company.** Respondents point out that the majority of receiverships tend to involve fixed charge receivers who control only certain assets of a company.