



Ross Asset Management Limited (In Receivership and Liquidation)

We have received the attached letter from Inland Revenue which sets out Inland Revenue's position regarding possible refunds. The key points to take from the letter are as follows:

- In order for an investor to obtain a tax refund for each year, the investor must demonstrate that there were fictitious investment(s) for that year and tax was actually paid in relation to those fictitious investment(s) for that year. A burden of proof will need to be passed to show that investments were fictitious and tax has actually been paid.
- Refunds are likely to be available for the 2009 and later years applying a 4 year rule, providing investors can satisfy the above burden of proof and refunds are issued within a 4 year period (ie. by 31 March 2014 in relation to the 2009 year and so on for later years).
- Refunds may also be available for the 2005 to 2008 income years applying an 8 year rule providing that the taxpayer can demonstrate that the over-paid tax results from a 'clear mistake or simple oversight' (and assuming a refund is released within an 8 year period ie. by 31 March 2014 for a 2005 refund and so on for later years). We are continuing to liaise with Inland Revenue regarding the 'clear mistake or simple oversight' criteria and will provide further updates when available.
- Inland Revenue are of the view that the 4 and 8 year refund time frames are to be determined having regard to when the refund is ultimately given; not merely the date the refund request is lodged.

Investors will need to obtain their own tax advice on their personal positions, but should be able to do so in the context of the letter.





19 March 2013

John Fisk
Partner
PricewaterhouseCoopers
P O Box 243
Wellington 6140

Dear John

Ross Asset Management Limited (In Receivership & Liquidation) and related entities ("RAM") – Possible investor tax refunds

We refer to our discussions in relation to the RAM situation and potential income tax refunds that may be due to investors who have previously paid income tax in relation to RAM investments that are determined to be fictitious.

As you will appreciate, refund requests are lodged by individual taxpayers having regard to their individual circumstances. Further, whether a taxpayer is able to get a tax refund requires firstly that the taxpayer is able to demonstrate that the taxpayer has actually paid tax in relation to a fictitious investment. In the RAM situation, we understand the extent of the fictitious investments covering potentially multiple years is still to be determined and this will be directly relevant for determining any refunds for prior years.

Notwithstanding this, we comment below in relation to potential refunds and whether investors need to take any action pre 31 March 2013 in relation to potential prior year refunds.

Our comments are intended to provide generic assistance to the RAM investor group, noting our above comments that work in confirming the extent of fictitious investments is not yet completed and refund requests will need to be lodged for individual taxpayers and be reviewed on a case-by-case basis.

Income tax law – refunds

Income tax law currently provides mechanisms for taxpayers to obtain tax refunds, including a '4 year' timeframe during which the Commissioner must refund overpaid tax, which can be extended to '8 years' where there is a 'clear mistake or simple oversight'. Different rules applied in the 2004 and earlier years. In respect to the 2003/2004 income year for example refunds requested in writing prior to the expiration of the 8 year period were able to be released after the end of that period.

In relation to refund requests relating to the 2005 and later years, we are of the view that the 4 and 8 year timeframes are to be determined having regard to when a return was filed, when that return becomes statute barred, and when the refund is ultimately given; not merely the date when a refund request is lodged. Refunds are not given outside the 4 year and 8 year periods.

In relation to RAM investors, we have given initial consideration to the 'clear mistake or simple oversight' criteria in the 8 year rule and at this stage we are uncomfortable reaching a position on this until the facts are clearer.

Ultimately whether there has been a clear mistake or oversight is to be determined on a taxpayer by taxpayer basis having regard to a taxpayer's individual circumstances.

In a practical sense, for a normal taxpayer who files tax returns by the due date, the position is likely to be as follows:

Year Ended 31 March	Return filed by 31 March	4 year statute bar 31 March	4 year rule – refund released by 31 March	8 year rule – refund released by 31 March
2012	2013	2017	2017	2021
2011	2012	2016	2016	2020
2010	2011	2015	2015	2019
2009	2010	2014	2014	2018
2008	2009	2013	Refund not available applying 4 year rule – refund not released within 4 year period e.g. 2008 refund not released by 31 March 2013	2017
2007	2008	2012		2016
2006	2007	2011		2015
2005	2006	2010		2014

Where taxpayers meet the statutory criteria for having their returns amended we would expect that any refund(s) are likely to be available as follows:

- for the 2009 and later years applying the 4 year rule (assuming refunds released within 4 year period i.e. by 31 March 2014 in relation to the 2009 year and so on for 2010, 2011 and 2012);
- for the 2005 to 2008 years applying the 8 year rule providing the taxpayer can demonstrate that the over-paid tax results from a clear mistake or simple oversight (and assuming the refund is released within the 4 year period e.g. by 31 March 2014 in respect of the 2005 year).

If refund requests are not processed by 31 March 2014, then the 4 year rule will not allow a refund in relation to the 2009 year and the 8 year rule will not allow a refund for the 2005 year.

It should be noted that the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill which has been referred to the Finance and Expenditure Committee includes changes to end refunds being issued after the 4 year rule for the 2013/2014 and later income years.

Yours sincerely

 Hall.

Graeme Hall
Senior Technical Advisor
Inland Revenue