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NZX Announcement

Tax Litigation – Supreme Court Judgment

Today the Supreme Court has released its judgment against Trustpower in relation to a dispute between it and the Inland Revenue in relation to the tax treatment of feasibility expenditure incurred in the 2006 to 2008 financial years.

Trustpower was successful in a previous High Court case where it was determined that Trustpower had appropriately deducted feasibility expenditure and that certain resource consents acquired were not capital assets. The Supreme Court upheld the Court of Appeal judgment, which overturned the High Court determinations and has disallowed the expenditure claimed by Trustpower as deductible for the 2006 – 2008 tax years.

In its audited financial statements for the year ended 31 March 2016 Trustpower disclosed its estimated exposure for the 2006 – 2008 tax years and future years based on the position argued by the Commissioner (Note 22). These amounts were fully provided for in the financial results but have not yet been paid to Inland Revenue. In addition, in a contingent liabilities note (Note 25) Trustpower stated that, should the Supreme Court ruling agree with the Court of Appeal that a revised approach is required to determining the deductibility of feasibility expenditure then additional costs may be incurred. That note stated that Trustpower considered that the impact of losing the appeal was not likely to exceed \$4 million, even if a retrospective test is applied to the income years to March 2016.

The amounts provided for in the financial statements as at 31 March 2016, included in note 22, are repeated in the table below:

	2006 to 2008	2009 to 2010	2011 to 2016	Total
	\$000	\$000	\$000	\$000
Tax Payable	5,924	2,632	2,187	10,743
Interest expense	3,074	1,550	681	5,304

The impact of these adjustments on the net profit after tax in the income statement was estimated at \$6.6m. The contingent liability noted above is in addition to these sums and is likely to impact on tax expense in the income statement should it occur.

Trustpower is liable for costs to Inland Revenue, including for \$45,000 in the Supreme Court.

Trustpower expects to provide a more considered view of its most likely position, with its half year results in November 2016.

Trustpower is very disappointed with this result as it overturns what was a well-established practice for the deduction of feasibility expenditure as published by the Inland Revenue Department and is likely to result in a significant increase in non-deductible “black hole” expenditure across all industry sectors.

A handwritten signature in blue ink, appearing to read 'K Palmer', with a stylized, flowing script.

Kevin Palmer
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