

On 1 July 2015 the Federal Court of Australia handed down its decision in [Commissioner of Taxation v Warner](#) [2015] FCA 659 in respect of notices to produce issued under section 264 of *Income Tax Assessment Act 1936* (Cth) (ITAA 1936) and section 353-10 of Sch 1 to the *Taxation Administration Act 1953* (Cth) on liquidator

The liquidator took issue with the notice and argued that section 486 of the *Corporations Act* requires a creditor of a company in liquidation to obtain a court order before it can inspect the company's records held by its liquidator, and that section 264 of ITAA 1936 was inconsistent with section 486 of the *Corporations Act*. The court had to determine whether the liquidator was obliged to comply with the notice issued by the ATO.

The Court held that the Commissioner (ATO) had a legitimate interest regardless of the winding up to access the records of a company. The ATO's interest does not only arise from the winding up and is broader than that of an ordinary creditor.

The Court held that a declaration should be made that the obligation of the first and second respondent liquidators to comply with the notice issued under section 264 of the ITAA 1936 and s 353-10 of Sch 1 to the TAA served on them in their capacity as liquidators and their obligation is not subject to, or affected by, section 486 of the *Corporations Act*, including as applied by s 511 of that Act.