

Finance Bill: Round up of tax management changes

(Lecture B1200 – 12.53 minutes)

HMRC debts in an insolvency

Clause 95 introduces provisions such that VAT and 'relevant deductions' will be preferential debts for HMRC to recover from 1 December 2020. This is a change from the announced date of 6 April 2020.

A deduction is 'relevant' if the debtor is required to deduct from a payment to another person and that payment is credited against the liability of the other person. This covers PAYE, student loan repayments, Employees NICs and CIS deductions.

Other tax liabilities will remain unsecured and rank with other unsecured creditors equally.

There are consequential amendments to other legislation to ensure that this applies across the UK and Clause 96 makes amendments to various pieces of secondary legislation.

Joint and several liability

Clause 97 and Sch.12 introduce a new regime to give HMRC the power to make directors (including shadow directors) and other persons connected with a company joint and severally liable for the company's tax liabilities, as well as to members of limited liability partnerships.

It will not apply to tax liabilities that relate to a period ending before the day on which Royal Assent is achieved or arising from an event or default occurring before that day or penalty determination issued before that day.

It will only apply where a notice is given under one of the following provisions:

- a) Tax avoidance and tax evasion cases
- b) Repeated insolvency and non-payment cases
- c) Cases involving penalty for facilitating avoidance or evasion

There are various requirements as to what information has to be provided in the notice. There is a right of review and right of appeal against tax liability.

Tax avoidance and tax evasion

The following conditions have to be met:

1. The company has entered into tax avoidance arrangements or tax-evasive conduct
2. The company is subject of insolvency procedures or there is a serious possibility this will happen

3. The individual was responsible for entering into the tax avoidance arrangements or engaging in the tax-evasive conduct or received a benefit from such (which they knew about) or took part in, assisted with or facilitated these as a director or shadow director or when taking part in the management of the company
4. There is likely to be a tax liability relating to the arrangements or conduct
5. There is a serious possibility that some or all of the relevant tax liability will not be paid.

Tax avoidance arrangements mean cases where GAAR notice has been given, where follower notices have been issued or where APN could be issued, DOTAS arrangements, arrangements where relevant tribunal order has been made (being order to disclose) or arrangements substantially similar to any of the above.

Tax evasive conduct means giving to HMRC any deliberately inaccurate return, claim, document or information.

Repeated insolvency and non-payment cases

The following conditions have to be met:

- A. There are at least two companies (the old companies) where, in relation to each,
 - The individual had a relevant connection in the 5 years up to the date of the issue of the notice
 - The company became subject to an insolvency procedure during the five-year period
 - At the point of insolvency there was unpaid tax or failures relating to submission of returns
- B. Another company (the new company) is or has been carrying on the same trade as activities carried on by the old company
- C. Individual had a relevant connection with the new company during the five-year period
- D. At least one of the old companies has a tax liability and the total amount of all outstanding liabilities is
 - More than £10,000, and
 - More than 50% of the companies' liabilities to unsecured debtors

Relevant connection here means director, shadow director or participator or (in relation to the new company only) concerned with the management of the company.

A notice may not be issued after the end of two years from when HMRC first became aware that the conditions were met.

Penalty for facilitating avoidance or evasion

The following conditions have to be met:

- A. A penalty has been issued under specified provisions
 - Penalties for DOTAS breaches
 - Penalties for promoters of tax avoidance schemes
 - Penalties for enablers of offshore tax evasion
 - Penalties for enablers of defeated tax avoidance
- B. The company is subject of insolvency procedures or there is a serious possibility this will happen
- C. The individual was a director or shadow director or participator at the time of the act or omission to which the penalty relates
- D. There is a serious possibility that some or all of the penalty will not be paid.

General Anti-Abuse Rules

Some minor changes are made to the operation of the GAAR by Clause 98 and Sch.13, mainly to simplify the procedures and remove ambiguity from the legislation.

It also ensures that where HMRC decides not to pursue a taxpayer using the GAAR, that enquiries can still be pursued using technical non-GAAR arguments.

Automated notices and penalties

Clause 100 introduces legislation to confirm that HMRC may use automated processes to issue taxpayers with notices to file tax returns and to issue penalty notices.

This will apply prospectively and retrospectively and is in response to cases that HMRC has lost at Tax Tribunals where judges have held that the requirement that a notice or penalty be determined by an Officer of the Board of HMRC meant that automatic notices and penalties were not valid.

LLP returns

LLPs are used by many businesses as a legitimate vehicle. Where an LLP is not operating with a view to profit, it is not treated as tax transparent and becomes liable to corporation tax.

Clause 101 makes an amendment such that if a return is made on the basis that an LLP is operating with a view to profit and the income is taxed on the members that it will be treated as a legitimate partnership return.

This is because HMRC have had cases where losses have been allocated to partners under such LLP returns but avoidance promoters have then sought to argue that the partnership return cannot be amended because the LLP is not operating with a view to profit so it is not a legitimate return.