

Newman & Partners

Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at insolvency@newmanandpartners.co.uk

New rules proposed to prevent individuals misusing company insolvency rules

The current draft Finance Bill has announced new powers for HMRC to make directors, participators and managers of companies jointly and severally liable for certain tax debts during insolvency. The introduction of these new powers is intended to crack down on a minority of taxpayers who artificially and unfairly seek to avoid their tax liability through the misuse of company insolvency.

The new rules to prevent individuals misusing the company insolvency rules are likely to be introduced in the coming Finance Bill, which will take effect from the date of Royal Assent in 2020. The power will allow HMRC to issue a joint liability notice to directors, participators and managers of a company which makes them jointly and severally liable for the tax liability.

This will affect companies where they have entered into tax avoidance arrangements or engaged in tax-evasive conduct; are subject to an insolvency proceeding (or there is a serious possibility it will be); and there is a possibility that a tax liability relating to the arrangements or conduct will not be paid.



The draft legislation includes a precise definition of tax avoidance arrangements, which require the arrangements to fall within particular established anti-avoidance regimes including the DOTAS, GAAR and follower notice provisions, while tax evasive conduct is more widely defined.

The new legislation also makes provisions for phoenix businesses that allow HMRC to issue a joint liability notice to an individual who, within the last five years has been a director or participator of at least two companies (the old companies) which became subject to insolvency proceedings when they had an unpaid tax liability or outstanding return; is also a director, participator or manager of a new company which is, or has been, carrying on a trade or activity the same as or similar to both of the old companies; and at least one of the old companies has an unpaid tax liability with their total tax liabilities exceeding £10,000 and representing more than 50 per cent of the total amount owed to creditors.

The notice can cover unpaid tax liabilities for both the old and new companies at the date it is issued and can also cover any tax liability of the new company in the following five years. However, HMRC only has two years from when they become aware that the conditions are met to issue a notice. HMRC has said that these powers are not intended to be used against turnaround specialists

and that where someone falls within the rules solely by virtue of being a participator, they will not issue a notice where they are satisfied they “acted in good faith, having no influence over the company’s affairs”.

In cases where a person or business has facilitated avoidance or evasion, HMRC can issue a notice of joint liability notice to a director or participator if one of several specific penalties under the DOTAS, POTAS or enablers regimes has been levied on the company by HMRC, or proceedings commenced before the First-tier Tribunal for such penalties to be imposed; where the company is subject to an insolvency procedure, or there is a serious possibility it will become so; where the individual was a director or participator at the time of any act or omission in respect of which the penalty arises; and if there is a serious possibility some or all of the penalty won’t be paid.

The above is based on draft legislation, which may be subject to change, but any individuals who have had involvement with insolvent companies should monitor the development of this policy to ensure that they are not caught out by it. Our team at Newman and Partners will try to keep you updated on this policy-development, but if you have any queries please contact us.

Scammers pose as Insolvency Service in complex asset recovery scheme

The Official Receiver is warning investors to “not engage with recovery schemes” after scammers target people who previously invested funds through Essex and London Properties Limited. This company was wound up in September 2018 on the basis of the public interest and the Official Receiver was appointed liquidator.

However, the Official Receiver is now aware of several ‘recovery schemes’ targeting the company’s investors, which claim that they can retrieve invested capital from the liquidation process. Many pretend to be acting in co-operation with the Official Receiver and some even claim to be the Insolvency Service itself acting for investors.

Joanna Caswell, Deputy Official Receiver, said: “These schemes pose a serious threat as they will attempt to elicit further funds from you which you are unlikely to see again. In the strongest possible terms, we strongly advise anyone who invested in Essex and London to not engage with anyone who claims they can recover your investments.

“The Official Receiver will never contact anyone offering to recover their money for a fee or recommend another organisation offering the same service. If in doubt, contact the Official Receiver. Creditors of Essex and London Properties Limited who have received an unsolicited letter or email should notify the Official Receiver immediately. When there are updates on the progress of the liquidation of the company, these will be contacted by the Official Receiver directly.”

During liquidation, a company’s assets are realised to repay its debts. Investors are entitled to register as a creditor with the liquidator to try and recover money from the company’s assets. Funds will be distributed by the liquidator once the liquidation process has been resolved. The

Official Receiver has made it clear that “there are no other avenues for the assets to be recovered and realised, so if you are approached by a company that offers one, you should be extremely sceptical.”

If you think you have been contacted about a scam, contact the Financial Conduct Authority’s Consumer Helpline on 0800 111 6768. If the scam relates to a case being handled by the Insolvency Service, contact the Official Receiver with details so that they can investigate and warn other creditors. If you are ever unsure you can also speak with the team at Newman and Partners, so please contact us.

Contactless payments are fuelling debt

Our comment in the July issue of this bulletin has been endorsed by a new report which has indicated that the growth of contactless payments among younger people is fuelling the issue of problem debt. Experts are warning that the speed of contactless payments, as well as the ease of online payments and transfers, are making it “too easy” to spend money.

The research found that despite the growth of financial technology, more than one in ten young people are thinking of reverting back to using cash as a way to control their spending. Conducted by The Claude Littner Business School at the University of West London, the study also showed that one in five young Londoners below the age of 45 is struggling to clear debts because of the ease of ‘tap and go’ payments.

Similar data published at the start of this year showed that the number of young people declaring bankruptcy has increased by tenfold during the

last three years. Responding to both of these findings, Dr Yehia Nawar of the business school said he is concerned that millennials’ use of digital payments was affecting their finances and said that two-thirds put overspending down to the ease of digital payments, with a fifth saying that it had landed them in an unauthorised overdraft.

Grace Brownfield of debt charity, StepChange, said: “Under-25s are a growing and significant proportion of our clients, with an average outstanding debt of over £6,000. Young people are also more likely to have insecure or irregular

income, which can put them at greater risk of problem debt.”

According to the latest official data from UK Finance ‘tap and go’ transactions became the most common payment method in 2018, overtaking cash payments. As a result, it is understood that two in every five card transactions in Britain are now made with contactless technology. If you have a client that is struggling with problem debt then we may be able to help. Speak to the team at Newman and Partners today.

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