



The Insolvency
Service

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DEAR INSOLVENCY PRACTITIONER Issue 141 – January 2022

Dear Reader

Please find enclosed the latest articles from the Insolvency Service and HMRC.

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38) Incorrect treatment of HMRC claims

HMRC continues to see instances where Insolvency Practitioners incorrectly deny or reduce HMRC's claim when considering it for voting purposes in a decision procedure, particularly where the insolvent person or others may dispute the amount due to HMRC.

This can result in protracted correspondence between HMRC and the office-holder, additional costs for the insolvency estate and HMRC, and unnecessary delays in administering the insolvency. It has even led to HMRC being forced to report some Insolvency Practitioners to their licencing bodies.

It is well established that it is not open to an Insolvency Practitioner to go behind a debt that has been validly brought into charge using tax legislation, including a tax assessment. The proper mechanism for challenge is the tax tribunals. For example, the decision in D&D Marketing (A Firm) (2002) [2002] EWHC 660; [2003] BPIR 539 established that an amount of tax was deemed to be due notwithstanding a pending appeal.

A similar decision was reached in the more recent case of Re Sharp Business Developments [2015] EWHC 4272 (Ch), where the court again found it was not open to the court or an Insolvency Practitioner to go behind a validly raised HMRC assessment, even if an appeal had already been made but not yet heard, unless the assessment had "been raised in some fraudulent or collusive way or there was some other glaring miscarriage of justice". The case references other relevant cases such as Lam v Inland Revenue [2005] EWHC 592 (Ch), particularly paragraphs 12 and 13 of Lam.

Where a debt due to HMRC has been established which can be appealed (e.g. through a return having been filed or an assessment being made), the office-holder must accept that debt in full for voting purposes in a decision procedure as it stands. This remains the case even if the office-holder or others consider the amount owed to HMRC to be incorrect. The route to challenge an incorrect HMRC debt is to overturn it through a successful appeal using the tax tribunals, not through rejecting a HMRC proof of debt, or marking it as objected to.

This note is issued by the Head of the Insolvency Profession Team, part of Solicitor's Office and Legal Services in HMRC. Any questions relating to its content should be addressed to insolvencygovernanceprofessionalisminbox@hmrc.gov.uk.

39) HMRC: Introduction of mailbox for case queries update

As advised in Dear IP issue 139, HMRC recently launched its new mailbox: insolcustservices@hmrc.gov.uk, on 4 November 2021. Since then, HMRC has received a significant number of case queries and it would therefore like to issue a gentle reminder about the criteria when making contact using this mailbox.

HMRC asks that you use this route only when contacts via the normal channels have failed to elicit a response, despite repeated attempts.

To allow HMRC to help you, it asks that in every case, whether that may be Option 1 or 2, the contact form is completed providing full details of your query and this is attached to your email. Without a contact form HMRC will be unable to deal with your query. HMRC does not require any additional attachments. The response time continues to be 15 working days.

HMRC will not respond to emails noted as complaints. HMRC's published complaints procedure should be followed as usual.

If you have any questions, please direct them to R3 or your authorising body who will take them forward with HMRC.

52) Contacting the Insolvency Service about the Director Conduct Reporting Service

Due to a technical issue, the Insolvency Service had to suspend the “Contact” option on the Director Conduct Reporting Service (DCRS) in August. We thought that the issue had been resolved and reinstated the “Contact” option in December.

Unfortunately, the resolution has not been successful and the “Contact” option is now diverted to the Insolvency Service website home page.

Therefore, if you need to contact the Insolvency Service regarding DCRS, either for general matters, to provide new information or to request additional time to submit a report, please email DCAS@insolvency.gov.uk

If your contact is related to a case, please make sure you provide details of the case name and NCL reference number.

Any enquiries regarding this article should be directed towards email:
DCAS@insolvency.gov.uk

78) Changes to requests for information for Directors' claims

In the previous year the RPS has received a number of fraudulent claims. Although these claims passed the verification checks undertaken by IPs, they were later found to be based on falsified documents. HMRC, as the body with overall control and management of the National Insurance Fund, is taking forward investigation into the fraud. As a result of this, the RPS has implemented additional controls which have stopped further fraudulent claims being processed and increased checks on new claims being received.

The RPS will now no longer use RP3 forms to gather information from directors. Instead, a new directors' questionnaire is being issued in its place. Although similar to the RP3, this new questionnaire asks more specific questions to assist the RPS in establishing whether or not the director held employee status. It also includes requests for documents to support the director's claim, such as contract of employment, HMRC employment history, P60s, wage slips and the latest full company accounts.

In addition to this, where a director has paid themselves at a rate lower than National Minimum Wage, they will be asked to sign a declaration to that effect. This declaration contains an acknowledgement that the RPS may refer the claim to HMRC and the Insolvency Service's Investigation and Enforcement Services ("IES") for breach of the National Minimum Wage Act 1998.

Any enquiries regarding this article should be directed towards email:
RPS.Stakeholder@insolvency.gov.uk