

INSOLVENCY BULLETIN

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HMRC PUBLISHES LATEST GUIDANCE ON PHOENIXISM

Phoenixism is the practice of carrying on the same or a similar business through a series of companies which in turn become subject to an insolvency procedure.

In such circumstances it is the Crown which is habitually left with the largest unpaid debts, other creditors often receiving substantial part or full payment prior to entry by a company into formal insolvency, thus encouraging a future line of credit when a new company rises from the ashes of the old.

On 7th October 2021, HMRC published its latest guidance on joint and several liability notices and “*what HMRC will do when an individual has been connected with companies that have been insolvent with outstanding amounts owed to HMRC*”.

A joint and several liability notice means that an individual will be personally liable, together with a new company, for:

- any unpaid tax liability of the new company which is unpaid on the day the joint and several liability notice is given; and
- any tax liability of the new company that arises during five years beginning with the date the notice is given and while the notice continues to have effect.

There are four conditions which are required for a joint and several liability notice to be issued.

- A. In the last five years the individual must have had a relevant connection to at least two “old companies” subject to an insolvency procedure and owing tax, or with outstanding tax affairs.

The HMRC guidance makes clear that where an individual acted in good faith and had no material influence over a company’s affairs a notice will not be issued.

- B. A “new company” is or has been carrying on a similar trade to any two of the old companies.

The “new company” will be carrying on an activity which is the same or similar to any two of the old companies. Here the guidance is broad stating “*It may, for example, provide the same services or use the old business’s assets, such as its workforce or business premises*”.

- C. The individual has a relevant connection to the “new company”.

This includes both shadow and de jure directors or persons either directly or indirectly involved in the management of the company and resembles the disqualification regime in defining what constitutes an active role within a company.

- D. The relevant old companies have a tax liability of more than £10,000 that is more than 50% of the total amount of those companies’ liabilities to their unsecured creditors.

Editor's Note.

These guidelines are to be welcomed. They should make delinquent directors pause for thought before they embark on a further venture which deprives the public purse of monies due to it. They will however still allow directors of at least two failed companies the opportunity to embark on new projects and thus cannot be considered “anti-enterprise”.



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