

Directors Disqualification

Over the last few months, the Insolvency Service have reported that a number of directors have been disqualified for lengthy periods for continuing to trade to the detriment of HM Revenue and Customs (HMRC) or not keeping adequate accounting records.

- Case 1- A director was disqualified for failing to pay HMRC whilst paying himself over £150,000, at a time when the company was insolvent. The director was disqualified for a period of six years. Failure to pay HMRC is a common allegation that directors face and it indicates that being a director of a limited company does not make that director one step removed and insulated from what happens under his/her stewardship of the company. This is particularly true when the company fails to pay HMRC.
- Case 2- A director was disqualified for five years where the deficiency in the company, which went into insolvent liquidation, was £100,000, of which £90,000 was owed to HMRC in respect of PAYE, NIC, VAT and Corporation Tax. Previously such an allegation would have warranted a three to four year disqualification period but the Government appear to be now making the consequences harsher.
- Case 3- Two directors were disqualified from acting as directors for a period of ten years each for failing to ensure that the company preserved or delivered up adequate accounting records. The fact that the company's accounting records were not being maintained or provided to the Liquidator is often not enough to obtain such a lengthy period of disqualification. In other words, typically there needs to be some sort of financial or other consequence of the failure by the directors to preserve or deliver up accounting records. In this particular case, it would appear that the Insolvency Service was unable to establish the company's income, which was mainly cash, but also the expenditure of the company including the recipients, and the purpose of over £900,000 worth of cheques. Nor was it possible to establish the level of the directors' drawings and this and a number of other less serious issues appear to have warranted the lengthy period of disqualification.

It does appear that the Insolvency Service will rigorously pursue traders who seek an unfair advantage over their competitors by not paying VAT or PAYE to the Crown.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.