

SECURITY FOR THE PAYMENT OF TAX – AN UPDATE

As previously advised HM Revenue & Customs has various powers to require security for the payment of tax where a business has been transferred to a new entity.

However, concern has recently been expressed that in cases where a company or an individual may otherwise be in a position to put forward a realistic proposal for a voluntary arrangement, the requirement to provide security could render such a course impractical. It has even been reported that HMRC's Special Investigation Teams have issued requirements for security in cases where the Voluntary Arrangement Service has already agreed proposals for a voluntary arrangement.

In Summary HM Revenue and Customs have the following powers:-

VAT – HMRC may require a taxpayer to provide security for the payment of VAT in circumstances where they consider it necessary for the protection of the Revenue. The security may take the form of a cash deposit or a bond, which may be for a considerable sum. A person required to pay a security can appeal against the decision.

PAYE & Class 1 National Insurance (NICS) – from 6 April 2012, HMRC has had the power to require security for the payment of PAYE and Class 1 NICS where they consider it necessary for the protection of the Revenue. It is a criminal offence to fail to provide security and as with VAT the security may take the form of a cash deposit or a bond.

HMRC has advised as follows:

Asking for VAT Security when a voluntary arrangement is in place is only undertaken in exceptional circumstances and in cases where they consider the Revenue is at risk. This should only be considered after discussion with debt management and banking teams and in cases where HMRC has not agreed or would not agree, to the voluntary arrangement if it was in a position to do so.

Each case is risk assessed and a decision to seek security is only made in cases where they consider that in the future the Revenue remains at risk of not being paid after taking into consideration the past compliance record of the business and the behaviour of the business towards meeting its tax obligations. Any decision is subject to review and an appeal by the business if it considers HMRC has treated it unfairly or has not taken into account relevant information before arriving at the decision.

HMRC applies a similar approach to pre-pack arrangements where all indications point towards HMRC being the main creditor and the arrangement relieves the new company of all its tax debts before it begins trading.

HMRC has confirmed that it will review its internal guidance to ensure that it reflects this policy.

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. Initial advice 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.

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