

## **My company is under pressure from HMRC**

If HMRC suspect that your company is insolvent, they will more than likely start taking action against the limited company. HMRC should be contacted as soon as you know that you will be unable to make any payment by the specified due date.

### **Possible HMRC action**

#### **Letters**

Correspondence from HMRC is likely to increase and letters will become increasingly threatening. If you cannot pay the amount due, they may be willing to consider a 'Time To Pay' arrangement, however, this option is only available to companies that HMRC consider to be viable. If HMRC consider a 'Time To Pay' arrangement is not an option they may instruct various debt collection agencies to pursue the debt on their behalf, incurring significant charges, fees and penalties.

#### **Visit from HMRC Enforcement Officer**

Whilst this may seem as a negative course of action, Enforcement Officers have the powers to agree a repayment plan, usually if the outstanding amount is below £100,000. This could be an opportunity, provided funds are available to halt any further action. Should a repayment plan not be a viable option, the Enforcement Office may serve an Enforcement Notice on the company.

#### **Enforcement Notice**

An Enforcement Notice gives the company seven days to settle the debt in full together with any interest and charges, or negotiate a 'Time To Pay' arrangement. After the expiration of the 7 day period, if payment has not been made or an agreement reached Enforcement Officers, or bailiffs will be instructed to seize non-essential business assets.

Unlike other Creditors, HMRC do not need to apply for a court order to issue an enforcement notice.

If the debt remains unpaid, HMRC will take enforcement action using the Taking Control of Goods Regulations. There is sometimes an element of confusion over which officers may become involved at this stage.

- Bailiffs – Bailiffs may sometimes be referred to as HMRC Bailiffs, although they are not HMRC officers, they are employed by an independent firm who have been appointed to act on behalf of HMRC in respect of the collection of debts. Their powers of entry and seizure are limited although they may sometimes lead you to believe otherwise.
- HMRC Enforcement Officers – HMRC Enforcement Officers, also sometimes known as field agents have the right to force entry into your business premises as long as there is no residential element. They must have authority from a Justice of the Peace to do so.

#### **Inventory, Seizure and Sale**

The Taking Control of Goods Regulations, allows HMRC Officers to enter your business premises and list goods for potential sale to the value of the debt plus the costs of enforcement action. The items will be seized seven days later if the debt hasn't been settled or an agreement made. The items will be listed in a Controlled Goods Agreement, which you will be asked to sign, the goods will then be taken away and sold at auction. This action was formerly known as 'distrain' and can be

conducted by HMRC Enforcement Officers or appointed Bailiffs. If after sale there is still a deficiency then HMRC will continue to take action against the company.

### **Court Action**

Court action would be the next step that HMRC may take. Depending on the level of debt, previous HMRC payment history and the nature of the debt could determine what course of action they decide upon.

The options available are:

#### **County Court Judgement (CCJ)**

If a CCJ is issued against the company, non-payment of the CCJ may be used as evidence that the company is insolvent. A response i.e. payment, or a defence to the action must be made within 14 days. A further 14 days may be issued by the court as an extension to give time to pay. Should payment not be made after this period and the debt is £750 or more, HMRC may issue a winding-up petition against the company.

#### **Statutory Demand**

A Statutory Demand may be issued against the company. This is a formal demand for payment. A response should be made within 18 days. If the debt is for £750 or more and remains outstanding after the 18 day deadline then HMRC may decide to issue a winding-up petition against the company.

#### **Winding-Up Petition**

The final course of action after all of the above options have been considered and necessary action carried out is for HMRC to issue a winding-up petition against the company. This action, if successful will result in the company ceasing to trade and entering into Compulsory Liquidation.

All of the above actions may suggest an underlying liquidity/solvency issue and directors may wish to seek professional advice before HMRC take more severe action.

Please note that should your clients require any confidential advice regarding any 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 and clarification regarding insolvency law or procedure, please do not hesitate to contact us.