Insolvency and tax debts: a consultation

Management of taxes

01 April 2019

A new consultation looks at giving HMRC higher priority in respect of certain tax debts (including PAYE) in cases of insolvency. Let us have your comments.

Since 2003, when ‘Crown Preference’ was effectively abolished, HMRC has been a non-preferential creditor in respect of all taxes in cases of insolvency. However, it was announced at Budget 2018 that new legislation would be introduced to make HMRC a preferential creditor in respect of certain taxes.

A recently released HMRC consultation *Protecting your taxes in insolvency* invites views on how this change might be implemented.

The consultation proposes that, for insolvencies commencing on or after 6 April 2020 in England, Scotland and Wales, HMRC will be a preferential creditor in respect of the following taxes (all of which are paid by customers and employees but collected on HMRC’s behalf by businesses):

- VAT
- PAYE (including student loan repayments).
- Employee NICs
- Construction Industry Scheme (CIS) deductions.

The change will apply to debts in respect of these taxes which are due at the commencement of insolvency, including any penalties and interest in respect of them.

There will be no change with regard to taxes which are paid directly by the business (such as corporation tax and employer NICs) where HMRC will remain an unsecured creditor.

These proposals mean that HMRC would move ahead of holders of floating charges (mainly financial institutions) and other non-preferential unsecured creditors in terms of priority, but would remain below holders of fixed charges and higher ranking preferential creditors (which includes most employee claims).

The consultation poses a number of questions about the proposed scope of the changes, transitional issues and other potential impacts. The deadline for comments is 27 May 2019, with a summary of responses and draft legislation expected to be released in summer 2019.
If you have any comments on this consultation which you would like to feed in please send them to atttechnical@att.org.uk or technical@ciot.org.uk by 3 May 2019.