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# The return of Crown Preference



## Insolvency Law Changes - December 2020

It has been confirmed that from 1 December 2020 the UK tax authority, HMRC will move back up the creditor rankings in English insolvency proceedings in respect of certain taxes. It means they will rank ahead of floating charge holders and unsecured creditors in respect of certain taxes, including VAT, PAYE income tax and employees' national insurance contributions. The new change will not affect corporation tax and employer national insurance contributions, in relation to which HMRC will remain an unsecured creditor.

The new regime will not harm secured creditors with fixed security, who will continue to take priority over preferential creditors. It will, however, affect lenders with floating security, especially as the portion of floating charge realisations set aside to be paid to unsecured creditors in an insolvency will increase from £600,000 to £800,000. The payments to HMRC will be made from the proceeds of floating charge assets before amounts owed to the floating charge holders are paid. As a result of this change, smaller businesses may find it harder to have access to significant borrowing if the only security available for borrowing is a floating charge, especially in what is already a difficult economic environment.

Another important consideration is that, with the introduction of the new law, HMRC will have its preferential status even ahead of floating charge holders under floating charges created before the law was introduced. The effect is, therefore, retrospective as there are no time limits or financial caps.

So, what does this all mean? Martin Kingman, CEO of Professional Legal Collections Ltd, is an experienced insolvency lawyer: "Ultimately, the impact is likely to mean less cash for businesses, at a time when businesses need it most. The Regulations will lead to a reluctance in lenders providing corporates with funding, and many lenders will be concerned about the existing loans given the lack of time bar to the Regulations. One benefit may be that there is greater transparency and dialogue between a lender and the borrower. Lenders may consider requiring borrowers to make certain disclosures about the tax position of the borrower, provide financial updates during the duration of the loan, and allow the lender access to the relevant company records. I expect to see a sharp rise in the demands for Director personal guarantees"

At a time when business is still suffering the impacts of the COVID-19 pandemic and access to finance is more crucial than ever to keep cash flowing in business, the re-introducing crown preference is likely to impede the recovery of many viable companies. If you have any queries relating to any of the matters above, or require some further guidance then help is at hand. Please contact Professional Legal Collections Ltd for expert advice.

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