INSOLVENCY UPDATE

MESTON REID & Co
CHARTERED ACCOUNTANTS

Introduction

The North East economy appears to be showing some signs of optimism as the oil price edges upwards and major capital projects are undertaken such as the Western Peripheral Route, Harbour extension, Greyhope Bay project and the new football stadium for Aberdeen Football Club. That said, the cautiously optimistic output masks ongoing challenges with retail and leisure spending and hence, the mixed economic picture is difficult to forecast over the next six months.

From an insolvency practitioner's perspective, the local market offers opportunities to provide assistance to both individuals and businesses who are struggling to cope.

Tax abuse and insolvency

As announced in the 2018 Spring statement, the UK government plan to explore ways of tackling those who deliberately use the corporate insolvency regime to avoid/evade legitimate tax liabilities. A discussion document was published in April which sets out various areas of perceived abuse and, whilst it is acknowledged that the overwhelming majority of taxpayers meet their tax obligations, a minority seek to use the rules inappropriately. The consultation document advises that, since 2010, HMRC has secured over £175 billion in additional compliance revenue as a result of action taken to tackle tax evasion, avoidance and non compliance. Good news for the honest taxpayer.

It is accepted that when a company is subject to formal insolvency proceedings, there tends to be a tax liability which is often quite large and covers VAT, PAYE, NIC and corporation tax. There is a generally accepted view that "phoenixism" can be seen as unjust when a director "dumps" company A and starts trading with company B without paying company A's tax liabilities.

One suggestion is to transfer tax debts to a company director, or a responsible company officer, on a much wider basis than currently available. At the moment, some specific payroll deductions can become a personal liability, but the route is fairly tortuous and does not tend to be followed often. Another thought is that repeat offenders should be targeted, and some commentators have suggested that a director of a limited company that becomes subject to formal insolvency proceedings must demit office from every other company for a period of, say, five years. Draconian perhaps, but there are numerous instances of businesses settling suppliers' invoices but do not pay HMRC, dump the company and resume the same activity under a different name, or use a family member to assume the previous business.

Whilst HMRC are able to ask for a VAT security deposit in certain circumstances, this does not deal with the corporation tax liability which is a feature of almost every formal insolvency. One wonders if there is a role for The Insolvency Service in terms of being stricter when applying the provisions of the Company Directors' Disqualification Act 1986, although it might be claimed that a lack of resources precludes this option.

The Meston Reid & Co insolvency team will maintain a watching brief over this topic and keep readers advised of key developments as they arise.

The scourge of late payment

A recent media article included a comment from the Institute of Directors "IoD" that 52% of its members surveyed have faced the problem of late payment in the last twelve months. Interestingly, only 5% of those polled said that the delay was caused by a dispute between the supplier and the customer, inferring that the vast majority of cases are simply due to a customer delaying settlement. One of the many public reports regarding the collapse of Carillion suggested that subcontractors were typically paid after a 120 day delay and, of course, the domino effect of late payment is felt amongst the entire business community.

Readers may recall that a Prompt Payment Code was issued by the government some years ago, but such initiative does not appear to have solved the problem. Further, the IoD survey suggested that 34% of companies would support a mandatory maximum payment term. How this might be imposed is an interesting question, but if one considers this view in conjunction with the recent statistic indicating that UK small and medium enterprises are owed about £26.3 billion at any one time, and almost one half of this is paid late, there is clearly an issue in terms of cash flow and how to pay bills when they arise e.g. VAT at the end of each month/quarter.

12 Carden Place, Aberdeen
AB10 1UR, Scotland

T/ +44 (0)1224 625554
F/ +44 (0)1224 626089

E/ info@mestonreid.com
www.mestonreid.com

A difficult situation for the government to address but one that should not be ignored.

Protected trust deed statistics

Where an individual wishes to avoid sequestration but feels that the debt arrangement scheme is inappropriate, a protected trust deed offers the prospect of debt relief together with a repayment programme over a set period of time. A trust deed becomes protected once creditors agree that the terms are acceptable, and the process allows the individual to move forward with life without ongoing creditor pressure and anxiety.

As evidence that protected trust deeds remain a popular option in Scotland, the office of the accountant in bankruptcy report that there were 1,463 protected trust deeds in the quarter ended 31 March 2018, a 4.5% increase on the same quarter in the previous year. Such report also advises that there were 5,963 protected trust deeds for the year ended 31 March 2018 (an increase of 9% over 2016/17) and further, the volume now exceeds the number of sequestrations awarded on an annual basis.

The report includes the comment that the figures are in line with the UK-wide picture for personal insolvency, and that the number of individuals using a formal insolvency process in order to regulate their financial positon continues to be lower than ten years ago. The government understands that, for some people, formal insolvency is the only means of achieving a fresh start from the unmanageable burden of debt.

Naughty Lawyer!

A recent case brought by the director disqualification unit of The Insolvency Service saw Paul Shiner, a lawyer in England, having his bankruptcy period extended by six years after it was found that he had gifted assets to family members in an effort to avoid paying his creditors. The lawyer had petitioned for his own bankruptcy in 2017 declaring that he had no money to pay creditors after his legal practice had closed when he was struck off by The Law Society. Never likely to happen in Scotland.........or would it?

One-man company headache : IR35

The August 2017 Update referred to the ongoing HMRC interest in one-man companies, because there has been a long-held view that an individual can incorporate a one-man company and provide a service delivery at a lower net tax cost to him and hence, lessen the tax revenue to HMRC. Various test cases have shown that the area is complex and HMRC have sought to make it harder for a person to use a one-man company. As long as a one-man company operates within the bounds of the UK tax legislation there should be nothing to fear. However, if legislation changed and a one-man company was taxed as if the service provider was an employee of the customer, a significant cash flow headache would arise for thousands of companies across the land.

Further attention is also being focused upon whether or not an individual is employed by the person paying for service provision because, again, if it is determined that an individual is an employee rather than self-employed, the difference in national insurance contributions can have a substantial impact upon what is paid to HMRC.

There are numerous arguments in favour of a one-man company and/or being self employed and as long as the rules remain somewhat opaque and open to interpretation, one can hardly argue against an adviser seeking to help a client in terms of structuring his business affairs in order to minimise the tax liability.

GDPR

Readers will be aware that the new GDPR rules came into effect on 25 May 2018 and that such rules focus upon personal data e.g. how a bank, credit card company or consumer sales organisation deals with customers. For the avoidance of doubt, this Update is considered to be a business-to-business medium and each recipient is linked to an organisation with whom Meston Reid & Co has a business relationship. The names and addresses contained in the Update database are only used for this purpose. Nevertheless, if any reader wishes to be removed from the Update mailing list, please feel free to email ryriel@mestonreid.com accordingly.

Conclusion

This Update is provided for general interest purposes and does not purport to offer definitive advice. Please contact either Michael J M Reid (reidm@mestonreid.com) or Michelle Byrne (byrnem@mestonreid.com) if you wish to discuss anything raised herein.

Thank you for taking the time to read this Update and feel free to pass it to anyone who you think might be interested in reading it

Meston Reid & Co