

Playing hardball

HMRC is getting tough with business with tax arrears, says Phil Allingan, who explains the tactics the tax authority is employing to pressurise them

As each week and month goes by HMRC are turning the screw on businesses that have arrears of VAT, PAYE or Corporation Tax.

Do you remember the Covid lockdowns and restrictions from March 2020 until April 2022? It seems a long time ago now but how can we forget?

Since May 2022 the government have no longer had dedicated coronavirus teams so I suppose we can use that as the date when we officially came out of all restrictions. However, I speak to businesses every day that say they are still suffering financially and feeling the after-effects of the pandemic. Unfortunately, many businesses ceased trading during Covid, but there are still lots of businesses limping along on the verge of collapse.

During Covid times HMRC closed some of their debt management departments and stopped chasing businesses for overdue taxes, and instead were giving out money to some businesses to try to help them, as well as deferring payment of VAT or PAYE.

During Covid all HMRC's field agents – who visit businesses unannounced to chase arrears and sometimes seize assets – were re-deployed in other HMRC departments. HMRC also closed its enforcement and insolvency service (EIS). This is the office that issues winding up petitions against businesses that owe tax, so no companies were issued with winding up proceedings for almost two years.

HMRC also closed its securities department. This is the office that issues what is called a Notice of Requirement (NOR) to give security. This is where they ask for a security bond if they feel there is a risk a business won't pay their taxes on time.

In addition to closing the above three departments, HMRC didn't really chase any businesses for outstanding taxes, and they were agreeing time to pay plans of up to seven years. This was compared with the maximum 12-month time to pay plans prior to Covid. So, businesses had lots of breathing space from paying their taxes. Well, that has certainly changed now.

HMRC have been back with a vengeance for quite some time now and are aggressively pursuing businesses for overdue taxes. The days of seven-year time to pay plans are long gone, and all HMRC debt management departments have been fully up and running for a few years now.

I'll explain a bit about what the above three departments are now doing.

HMRC field agents

HMRC have around 1,000 field agents; all are based at home, but every day they will be given a number of businesses to visit. These will be businesses that have arrears of VAT, PAYE and/or Corporation Tax, and that have not responded to HMRC letters and phone calls and have no payment plan in place to repay their arrears.

The field agents are sent out to see what is happening and to speak to a director. They always turn up unannounced, with no advance warning. There is no set timescale as to when

a business will get a visit. In some parts of the UK it could be very soon after falling into arrears. In other areas, a business could be over a year in arrears and still not have had a visit. It all depends on how many businesses in that area are in arrears and how many field agents cover that area. The field agent will try to agree a payment plan, but they don't give very long timescales (usually 12 months, but sometimes a bit longer).

If they can't, or won't, agree a payment plan then the field agent has the powers to start what is called 'Taking Control of Goods' (TCOG) – seizing assets. To do this they will walk around the premises and make a list of all assets. They will charge a fee for doing this of 7.5% of the amount owed, so this fee can be quite hefty. The business is left with a document detailing the amount owed and the assets that have been listed, and informed that if payment in full isn't received by a certain date then they will return and take the goods listed. What HMRC do after this time period has expired is instruct external auctioneers to visit the premises and take the goods and sell them at auction. This can obviously be devastating for a business and, in most cases, will put them out of business, especially when the assets or goods taken will be things like computers and office equipment, furniture, vehicles, machinery and stock, etc.

However, in the vast majority of cases, HMRC list assets when they cannot legally do so. There are certain instances when they cannot list assets but HMRC field agents don't bother to find out whether they can or can't and just go full steam ahead. In my opinion, they do this to frighten the director into somehow getting the money to pay HMRC back.

Examples of when HMRC can't list assets are:

- When something is on finance (vehicle, machinery, etc.).
- When there is a debenture or charge registered at companies from a lender (bank, finance company, etc.).
- When the assets are not owned by the business (e.g. owned by the director personally or a third party).
- When the goods or stock have not been paid for yet (i.e. if the supplier still owns them until paid for).

So, it is vitally important to firstly avoid a HMRC field agent listing any assets, but if they do then make sure that they can actually start the Taking Control of Goods process, because in most instances they can't.

HMRC EIS

HMRC have two EIS offices that deal with limited companies, one in Worthing and one in Cardiff.

The file of a business will get sent to this office if that business has no payment plan in place and if HMRC won't agree a plan the business can afford. This is a last resort for HMRC, but more and more businesses are getting sent to this office and getting sent there quicker than at any time in the past five years.

HMRC issue around 40 winding up petitions every day. When they issue a winding up petition the company will be given a date to attend the High Court (usually about six weeks further on), where the business can explain to the Judge why the business shouldn't be wound up and HMRC's barrister will argue why it should. There are very few cases where a business wins, and in most cases the business will be wound up and placed into liquidation on that day. Not pleasant at all.

Notice of Requirements

I have been negotiating with HMRC on behalf of businesses for over 18 years and I have never seen HMRC issue as many Notice of Requirements to give security as they have been doing in the past few months.

HMRC will issue a NOR, asking for a VAT and/or PAYE security bond, in one of two instances:

- if the business has some arrears of VAT and/or PAYE and there is no payment plan in place; or
- if the director has recently liquidated a business with HMRC debt and then set up a new company. In this case HMRC may feel that the new company is an exact replica of the liquidated one and that there is a risk it may not pay its tax on time.

The most common reason for HMRC issuing a NOR is the first scenario, arrears. You might think it is a bit strange that if a business has arrears, of let's say £150,000, and they can't pay that, why would HMRC ask them for more money by way of a security bond?

If they can't pay their tax bills how can they pay a security bond? You will be exactly right in your way of thinking, but HMRC use the Notice of Requirement as a big stick to get businesses to agree a payment plan and start paying back what they owe. As soon as a business agrees a payment plan HMRC will withdraw the security bond request. If the business doesn't agree a payment plan and doesn't pay the security bond within 30 days, then all the directors will be committing a criminal offence and will be prosecuted and potentially receive a fine and a criminal record.

The Notice of Requirement to give security is issued to the company and to all directors individually, so it is a serious issue that will need resolving quickly.

The above three scenarios are not all HMRC's debt management collection tactics. They have many more stages of collecting arrears prior to it getting to these three stages but when any or, in some cases, all of these departments get involved it means it's getting serious and action needs to be taken quickly.

The only way to avoid any of the three situations I have mentioned here is to speak to HMRC when they contact you and get a payment plan agreed, either by doing this yourself or getting a professional involved to negotiate a plan on your behalf.

- Phil Allingan, Managing Director, Business Advice Service