

Lifting the corporate veil – HMRC’s liability notices

In most cases when a company closes with debts owed to HMRC, the debt dies with it. However, this is not so in all cases, especially with HMRC’s wider powers for alternative recovery routes.

We have addressed below the possible risks to directors of HMRC piercing the corporate veil.

Employee liability - The Income Tax (Pay As You Earn) Regulations 2003

If the amount of tax that should have been deducted from the employee’s wages/salary was more than the actual amount deducted then:

- If the employer took reasonable care, the failure to deduct was an error and they acted in good faith **and** the employee received payments knowing that the employer had failed to deduct the correct amount then the ***employee can be served a notice to pay.***

Officer Liability Notices (OLN) – Finance Act

Where there is evidence that a director has filed an understatement to pay tax or a false or inflated statement of loss or claim to repayment of tax, ***the directors whose actions caused the deliberate inaccuracy can be held liable for payment of all or part of the penalty.***

Personal Liability Notice (PLN) - Social Security Administration Act 1992

A **PLN** creates a personal liability for the debt on anyone served with a PLN. A PLN may be issued to **directors** of a company for some or all of the unpaid NIC where HMRC believes:

- The company wilfully failed to pay Class 1 NICs; and
- This failure was due to fraud or neglect by that individual.

This can occur when:

- Repeated failure to pay NICs while other creditors are paid.
- Setting up phoenix companies to avoid NIC liabilities.

Joint and Several Liability Notices (JLN) – Finance Act 2020

The powers have expanded for HMRC since **Joint and Several Liability Notices (JLN)** were introduced. Where issued the individual becomes jointly and severally liable for the relevant tax debts. JLN cover all taxes, not just NICs.

A JLN may be issued to an individual in the following circumstances:

Repeated Insolvency and Non-Payment

- The person has been involved with 2 or more insolvent companies in the last 5 years.
- A new company is carrying on a similar trade.

Tax Avoidance or Evasion

- They were involved in companies or arrangements involving tax avoidance or evasion.
- The company cannot pay its tax debts due to insolvency or other reasons.
- To those who enable tax avoidance arrangements that HMRC defeats.

Repeated Failure to Meet Tax Obligations

- To those involved with a company that has repeatedly failed to meet tax obligations.

And now Companies House can fine directors...

Under the **Economic Crime & Corporate Transparency Act 2023** Companies House now has the power to issue a penalty under [section 1132A of the Companies Act 2006](#). This can include:

- Failing to file a confirmation statement
- Failing to file accounts
- Not declaring the identification of registered directors

Depending on the offence, this can be a:

- Fixed penalty – a set amount based on the offence, previous behaviour and other factors
- Daily rate penalty – a daily penalty for each day that the offence continues
- Combination of a fixed penalty and daily rate penalty

Directors have a serious role to play when they are empowered to act for a company. It is important that they understand their duties and the implications for failure in those. The corporate veil isn't bullet proof...

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