ICAEW
REPRESENTATION 89/19

CHANGES TO PROTECT TAXES IN INSOLVENCY CASES (DRAFT FINANCE BILL 2019-20)

Issued 5 September 2019

ICAEW welcomes the opportunity to respond to the draft Finance Bill 2019-20 legislation consultation on Changes to protect taxes in insolvency cases published by HMRC on 11 July 2019.

This response of 5 September 2019 has been prepared by ICAEW's Business Law Department and reflects consultation with a variety of experts, including ICAEW's Insolvency Committee and Corporate Finance Faculty.

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EXECUTIVE SUMMARY

1. The proposed legislation would elevate some tax debts to preferential status in insolvencies, so that they would be paid in preference to floating charge holders and ordinary creditors.
2. This is a reversal of government strategy to promote an enterprise culture since the Enterprise Act 2002 and runs a serious risk that the wider costs will outweigh any expected benefit.
3. The proposal was announced without adequate consultation. We outlined our concerns about the process and the proposal itself in the post-announcement consultation (Rep 53/19). Our concerns are widely shared by other industry bodies.

THE MEASURE

4. The measure would mean that certain tax debts would have preferential status on insolvency, along with certain other debts, for instance those owed to employees.
5. Government estimates that this will result in additional tax take annually, the amounts varying, but with the highest figure given being £185 million for the year 2022/3.

OUR CONCERNS

6. Our concern is that the proposal did not take into account the impact that a change of this kind will have on the lending sector and enterprise more generally.
7. In particular, it will reduce access to finance in the UK by making lending on a ‘floating charge’ basis much riskier.
8. A restriction on access to finance will make it harder to rescue businesses. An increase in business failure will reduce what can be repaid out of insolvency procedures to creditors across the economy – including the Government.
9. Compounding this problem is the fact that, with more money going back to HMRC in insolvency procedures, less will be going back to trade creditors, pension schemes, and consumers. Poor returns from insolvency procedures can jeopardise the health of other businesses and trigger further insolvencies. The Government’s policy increases the chance of this happening.
10. Again, reduced chances of business rescue and an increased ‘knock-on’ effect from each insolvency means fewer thriving businesses – and fewer tax receipts for the Government.
11. In short, the Government’s policy will undermine confidence in trading, lending, and investing in the UK economy. It will not help make the UK a good place to do business.

OUR RECOMMENDATION

12. We urge Government to withdraw the proposed legislation.
13. If it does not do so, then we believe Government should seek to minimise the damage that will be caused and would be happy to engage in discussions as to how that might be done.