



Incorrect treatment of HMRC claim

HMRC continues to see instances where insolvency practitioners incorrectly deny or reduce HMRC's claim when considering it for voting purposes in a decision procedure, particularly where the insolvent person or others may dispute the amount due to HMRC.

This can result in protracted correspondence between HMRC and the office-holder, additional costs for the insolvency estate and HMRC, and unnecessary delays in administering the insolvency. It has even led to HMRC being forced to report some insolvency practitioners to their licensing bodies.

It is well established that it is not open to an insolvency practitioner to go behind a debt that has been validly brought into charge using tax legislation, including a tax assessment. The proper mechanism for challenge is the tax tribunals. For example, the decision in D&D Marketing (A Firm) (2002) [2002] EWHC 660; [2003] BPIR 539 established that an amount of tax was deemed to be due notwithstanding a pending appeal.

A similar decision was reached in the more recent case of Re Sharp Business Developments [2015] EWHC 4272 (Ch), where the court again found it was not open to the court or an insolvency practitioner to go behind a validly raised HMRC assessment, even

if an appeal had already been made but not yet heard, unless the assessment had "been raised in some fraudulent or collusive way or there was some other glaring miscarriage of justice". The case references other relevant cases such as Lam v Inland Revenue [2005] EWHC 592 (Ch), particularly paragraphs 12 and 13 of Lam.

Where a debt due to HMRC has been established which can be appealed (e.g., through a return having been filed or an assessment being made), the office-holder must accept that debt in full for voting purposes in a decision procedure as it stands. This remains the case even if the office-holder or others consider the amount owed to HMRC to be incorrect. The route to challenge an incorrect HMRC debt is to overturn it through a successful appeal using the tax tribunals, not through rejecting a HMRC proof of debt, or marking it as objected to.

This note is issued by the Head of the Insolvency Profession Team, part of Solicitor's Office and Legal Services in HMRC. Any questions relating to its content should be addressed to insolvencygovernanceprofessionalism@hmrc.gov.uk.