Autumn 2016

Kingston Smith & Partners
Licensed Insolvency Practitioners

Recovery Matters

HMRC seizing assets

Ian Robert, partner at Kingston Smith & Partners LLP welcomes you to the Autumn edition of Recovery Matters.

The number of UK businesses whose assets were seized by HM Revenue and Customs ('HMRC'), in order to settle outstanding debts grew sharply last year; up 145% from 649 in 2014/15 to 1592 in 2015/16.

According to reports HMRC seized assets to recover £42.6m of outstanding debt in the last year, an increase of 175% from the previous year where debts totalled £15.3m. This process is known as distraint.

What is distraint?
The main purpose of distraint is to obtain payment.

If a company has any outstanding tax liabilities, HMRC has the power to enter a UK business premises, itemise assets and serve a distraint order notice in respect of any outstanding tax liabilities. They are not entitled to force their way in.

The first time you are in danger of distraint is when you are visited by an HMRC officer. This will occur at your place of business in order to discuss and agree any outstanding liabilities. Once the liability has been agreed and no settlement is made, a distraint order will be issued.

If you have had a visit from an HMRC officer and have been issued with a distraint order notice this is not the end of the world but you need to act quickly. Usually you will have five days in which to respond by either paying or making arrangements to settle the outstanding liabilities, before assets can be seized.

If no payment is made within the time set for repayment, HMRC will levy distraint and seize sufficient assets to satisfy the debt and costs. This could be a single high value item or a number of assets. It is an offence for HMRC to levy excessively but they will seize sufficient goods to satisfy the debt, any interest and costs.

HMRC can still levy distraint even if there are insufficient available assets to cover the debt. A company will still be liable for any tax balance left outstanding after assets are sold.

If assets are seized then these will normally be sold at auction to pay the outstanding liability, together with any interest and costs incurred in removing and selling the assets.

Once assets have been seized, HMRC may remove the goods immediately, leave someone to guard the assets until they can be removed or have them locked away at the premises. A company also has the option of agreeing that the assets are left at the Company's premises and walking possession is granted to HMRC.

If goods are owned by a third party, that third party has five days in which to make representation before the goods will be sold.

Tax authorities have stressed that a majority of businesses pay their tax liabilities on time and confiscating assets make up less than 1% of calls from HMRC for payment of overdue tax. However, it is clear that HMRC are cracking down on UK businesses with overdue tax bills. It is a very last resort for them and only occurs in a small number of cases.

However the increase in numbers also suggests that businesses are having cash flow difficulties or do not have the necessary capital to pay ongoing liabilities.

It should also be noted that HMRC are not the only creditor that can serve a business with a distriant notice order. Any creditor can issue a distraint order notice but it is only HMRC and landlords who do not need a court order to do so.

Comment: HMRC lost its preferential creditor status in 2003, but it is only now that we are seeing more aggressive tactics to jump the creditor queue. Resources have been cut in all government departments and issuing distraint (outsourced to external bailiffs) is seen as a cheaper option than other recovery methods.

Chris Purkiss, Licensed Insolvency Practitioner at Kingston Smith & Partners LLP.

Kingston Smith & Partners takes off in Heathrow!

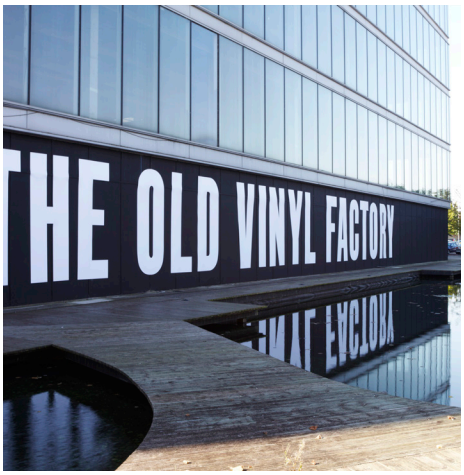
We are delighted to announce that Kingston Smith & Partners are offering a full range of restructuring and insolvency services from our new office in the Heathrow area.

Along with the partners and staff of top 20 chartered accountants and business advisers Kingston Smith, we have moved to The Old Vinyl Factory in Hayes.

The Old Vinyl Factory, which is located a short distance from Hayes & Harlington station just one stop away from London Heathrow airport, was once a global centre for innovation in product design and manufacturing as the European headquarters of EMI/HMV. The entire site is undergoing redevelopment and the new office has a modern and open plan feel, with excellent meeting, entertaining and event facilities.

Ian Robert, head of business and corporate recovery at Kingston Smith & Partners, comments: "We are pleased to be able to offer a full range of insolvency services to local businesses and advisers in the area, complementing the existing suite of business advisory services offered by the Kingston Smith team."

Our new address is The Shipping Building, The Old Vinyl Factory, Blyth Road, Hayes, London UB3 1HA.



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