

SCHEDULES

SCHEDULE 13

JOINT AND SEVERAL LIABILITY OF COMPANY DIRECTORS ETC

Repeated insolvency and non-payment cases

- 3 (1) An authorised HMRC officer may give a notice under this sub-paragraph to an individual if it appears to the officer that conditions A to D are met.
- (2) A notice under sub-paragraph (1) may not be issued after the end of the period of two years beginning with the day on which HMRC first became aware of facts sufficient for them reasonably to conclude that conditions A to D are met.
- (3) Condition A is that there are at least two companies (“the old companies”) in the case of each of which—
- (a) the individual had a relevant connection with the company at any time during the period of five years ending with the day on which the notice is given (“the five-year period”),
 - (b) the company became subject to an insolvency procedure during the five-year period, and
 - (c) at the time when the company became subject to that procedure—
 - (i) the company had a tax liability, or
 - (ii) the company had failed to submit a relevant return or other document, or to make a relevant declaration or application, that it was required to submit or make, or
 - (iii) the company had submitted a relevant return or other document, or had made a relevant declaration or application, but an act or omission on the part of the company had prevented HMRC from dealing with it.
- In sub-paragraphs (ii) and (iii) “relevant” means relevant to the question whether the company had a tax liability or how much its tax liability was.
- (4) Condition B is that another company (“the new company”) is or has been carrying on a trade or activity that is the same as, or is similar to, a trade or activity previously carried on by—
- (a) each of the old companies (if there are two of them), or
 - (b) any two of the old companies (if there are more than two).
- (5) Condition C is that the individual has had a relevant connection with the new company at any time during the five-year period.
- (6) Condition D is that at the time when the notice is given—
- (a) at least one of the old companies referred to in sub-paragraph (4)(a) or (b) has a tax liability, and
 - (b) the total amount of the tax liabilities of those companies—

Status: This is the original version (as it was originally enacted).

- (i) is more than £10,000, and
 - (ii) is more than 50% of the total amount of those companies' liabilities to their unsecured creditors.
- (7) An individual who is given a notice under sub-paragraph (1) is jointly and severally liable with the new company (and with any other individual who is given such a notice)—
- (a) for any tax liability that the new company has on the day on which the notice is given, and
 - (b) for any tax liability of the new company that arises—
 - (i) during the period of five years beginning with that day, and
 - (ii) while the notice continues to have effect.
- (8) If an old company referred to in sub-paragraph (4)(a) or (b) has a tax liability on the day on which an individual is given a notice under sub-paragraph (1), the individual is also jointly and severally liable with that company (and with any other individual who is given such a notice) for that liability.
- (9) Sub-paragraphs (7) and (8) are subject to paragraph 9 (interaction with penalties).
- (10) For the purposes of this paragraph—
- (a) an individual has a “relevant connection” with one of the old companies if the individual—
 - (i) is a director or shadow director of the company, or
 - (ii) is a participator in the company;
 - (b) an individual has a “relevant connection” with the new company if the individual—
 - (i) is a director or shadow director of the company,
 - (ii) is a participator in the company, or
 - (iii) is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (11) A notice under sub-paragraph (1) must—
- (a) set out the reasons for which it appears to the officer giving the notice that conditions A to D are met;
 - (b) state the effect of the notice;
 - (c) specify any amounts for which the individual is liable under sub-paragraph (7)(a) or (8);
 - (d) offer the individual a review of the decision to give the notice, and explain the effect of paragraph 11 (right of review);
 - (e) explain the effect of paragraph 13 (right of appeal).
- (12) The amount of the individual's liability under sub-paragraph (7)(a) or (8) is taken to be the amount specified under sub-paragraph (11)(c).
 For provision under which the amount so specified may be varied, see—
- (a) paragraph 10 (modification etc),
 - (b) paragraphs 11 and 12 (review), and
 - (c) paragraphs 13 and 14 (appeal).