

OUR GUIDE TO PERSONAL LIABILITY NOTICES FROM HM REVENUE & CUSTOMS

The principle of limited liability is a fundamental concept in business, that defines the extent of financial responsibility that shareholders or owners of a company have for the company's debts. It plays a significant role in encouraging investment and entrepreneurship.

Shareholders' (and directors') personal assets are generally protected from the company's debts and liabilities. This means that if a company becomes insolvent and its debts exceed its assets, the shareholders' financial liability is limited to the amount they have invested in the company (usually the value of their shares). Shareholders are not personally responsible for the company's debts beyond their investment.

However, HM Revenue & Customs ("HMRC") can issue a Personal Liability Notice ("PLN") when a company or Limited Liability Partnership ("LLP") fails to fulfil its tax debts or penalties. We are beginning to see this more regularly in practice.

What does a PLN do?

The PLN shifts some or all of the responsibility for the debt payment to one of its officers.

In what circumstances is a PLN issued?

A PLN is typically utilised by HMRC when it can substantiate that the failure to make the required payments is linked to intentional deception or negligence on the part of an officer. A PLN is commonly issued when a company enters Liquidation while still owing taxes.

Who is an officer of a company?

A company "officer" is defined as any individual fulfilling the role of a director or managing the business. In the case of an LLP, officers refer to its members.

The definition is clearly wide enough to include those individuals deemed to be "shadow directors".

Are there different types of PLN?

There are two primary categories of PLNs:

- 1) A PLN for National Insurance Contributions ("NIC") can only be issued if HMRC can prove, on the balance of probabilities, that the non-payment of taxes is directly linked to the fraud or negligence of one or more officers within the company. The legislation describes such officers as "culpable".
- 2) A PLN may be issued when a company is liable for a VAT penalty due to deliberate wrongdoing. The wrongdoing should be attributable to actions taken by one or more officers of the company. The officers are described as "liable". However, a PLN can only be issued if:
 - the officer personally benefited from or attempted to benefit from the misconduct; and
 - the company is insolvent or likely to become insolvent.

The criteria for imposing a VAT PLN is, therefore, more stringent than those for imposing a PLN for NICs.

Indicators of serious neglect & wrongdoing

- No tax payments for the full period of trading, or non-payment over a prolonged period of time;
- At the time of the failure to pay company was making payments to, or for the benefit of, one or more of its officers, connected persons or associated businesses;
- Where the tax was knowingly and deliberately withheld;
- Where one or more officers have been associated with other businesses that have failed to comply with their statutory obligations;
- Where the company is a phoenix company, following on from a previous insolvent business;

- At the time of the failure to pay the tax due, the company continued to make payments to other creditors;
- Where the evidence points to the tax that should have been remitted to HMRC being used to fund the company activities and boost cash flow;
- Where an action placed a significant tax liability on the company at a time that the officer would, or should have known that there was no reasonable prospect of the company being able to satisfy it. For example, the clearing of an overdrawn director's loan account through the declaration of a salary, just prior to Liquidation;
- An invoice has been issued showing VAT by an unauthorised person;
- A product was misused so that it attracted a higher rate of excise duty;
- Goods have been handled on which payment of excise duty is outstanding; and
- Material at an unauthorised waste site was knowingly disposed of, or caused or permitted to be.

Can a PLN be appealed?

For NICs, an officer can challenge a PLN by asserting one of the following grounds:

- a) The PLN shouldn't have been issued for the specified amounts.
- b) The failure to pay wasn't a result of fraud or negligence by the concerned officer.
- c) The individual wasn't an officer of the company during the alleged fraud or negligence.
- d) HMRC's decision to issue the PLN was unreasonable.

An officer has the right to contest the issuance of a VAT PLN by challenging either the decision to issue a PLN against them or the amount of the PLN. It's important to note that an appeal against a PLN doesn't affect the underlying company penalty, and only the company itself can appeal the company penalty.

How is an appeal submitted to HMRC?

An appeal against a PLN needs to be submitted in writing to HMRC. The officer may also request a delay in the PLN's payment until the appeal is resolved.

How is the company's debt affected?

It's important to note that an appeal against a PLN doesn't affect the underlying company debt and only the company itself can appeal its own liabilities.

Our conclusion

Officers can minimise the risk of receiving a PLN by seeking proper advice if their company faces potential financial difficulties.

If you would like specific guidance for you or your company, talk to Sadlers today.