

IMPORTANT: this is a crib sheet intended to assist volunteers at the Bankruptcy Representation Scheme. It is not legal advice and should not be relied on.

HMRC bankruptcy petitions crib sheet

Pay now argue later

- Assessments/determinations by HMRC can form the basis of a bankruptcy petition, i.e. even if the liability is not based on figures submitted or agreed to by the debtor (*Sinclair v IRC* (1992) 65 TC 94; *Neely v IRC* (1992) 66 TC 131; *Re a Debtor (No 960/SD/92)*, *Debtor v IRC* (1993) 66 TC 268).
- ‘Pay now argue later’ principle – most tax debts are due on the date demanded/specified even if the liability is contested (*Commissioners of Inland Revenue v Pearlberg* [1953] 1 WLR 331).
- Liability to pay is generally not suspended by an appeal to the FTT (for taxes covered by the Taxes Management Act, e.g. income tax, see ss 55 and 56 of the Taxes Management Act 1970; for VAT, *Re D and D Marketing (UK) Ltd* [2002] EWHC 660 (Ch); [2003] BPIR 539).
- However, if there is a dispute about the underlying liability it will nevertheless be treated as a disputed debt petition (*Commissioners for HM Revenue and Customs v Changtel Solutions UK Ltd* [2015] EWCA Civ 29; [2015] 1 WLR 3911).

What the bankruptcy court will (and won't) decide

- Note that para 11.4.4 of the Insolvency Practice Directions provides that the court will not go behind an assessment at the statutory demand stage, but generally the same also applies at the petition stage.
- The court will not consider/decide complaints about tax assessments which should be dealt with by the appropriate tax appeals procedure (*Worby v IRC* [2005] EWHC 835 (Ch); [2005] BPIR 1249 and *Glaxo Group Ltd v Inland Revenue Commissioners* [1995] STC 1075; *Re Hurren (A Bankrupt)* [1983] 1 WLR 183).
- However, if there is real doubt about the propriety of an assessment/determination, the petition should be adjourned for the appeal process (if applicable) to be completed (*Re Arena Corporation* [2004] EWCA Civ 371; [2004] BPIR 415).
- In exercising its discretion as to whether to adjourn, the court will take into consideration the prospects of the appeal (*Viera v Revenue and Customs Commissioners* [2017] EWHC 936 (Ch); [2017] 4 WLR 86).

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- A court may find that a debt is genuinely disputed if there is a genuinely disputed question of fact underlying the assessment, although it will not determine the assessment itself which is a matter for the FTT (*Revenue and Customs Commissioners v Potter* [2008] BPIR 1033; *Autologic Holdings Plc v Inland Revenue Commissioners* [2005] UKHL 54; [2006] 1 AC 118).
- The court might also go behind an assessment/determination in the event of fraud, collusion, or miscarriage of justice (*Arnold v Williams* [2008] EWHC 218 (Ch); [2008] BPIR 247) – of these three, the last of these is the most likely to be useful.

Practicalities

- Check whether any dispute applies to all or only part of the debt. Does the undisputed part (if any) take the case above the bankruptcy threshold? Note also the impact of penalties and interest.
- If the debtor has not filed returns they will probably need to do so ASAP. In many cases (where no returns have been filed) this is what will need to be done first (but note the potential urgency if an appeal is required). If returns are late, the debtor can expect to pay penalties and interest. If returns are 4+ years late, there are additional conditions to be permitted to file late returns.
- If an appeal is required, the normal deadline for most taxes is 30 days from the disputed decision. Any notice from HMRC will probably have specified the route/timing of an appeal. In principle permission can be sought to appeal out of time (either with the agreement of HMRC or from the FTT) if there is a reasonable excuse and not unreasonable delay thereafter – but the debtor will need to act quickly.
- The debtor will therefore need to seek accountancy and/or tax advice ASAP (it is unrealistic that you would be able to help with this). Many relatively affordable high-street accountants and tax advisors will be able to help with returns and tax appeals. Alternatively pro bono assistance may be obtained from TaxAid (www.taxaid.org.uk, tel 020 7803 4950) or, for older debtors, Tax Help For Older People (www.taxvol.org.uk, email taxvol@taxvol.org.uk, tel 0845 601 3321).

Volunteers: Please send any suggested additions, corrections or comments to admin@chba.org.uk