

## VATman and Robbin'

Businesses face increasing challenges with the VAT changes which came in at the beginning of the year. Caroline Armitage from solicitors Thomas Eggar LLP explains the new rules.

Ever thought it would be a cunning plan to delay paying VAT to HM Revenue and Customs to free up some working capital when times are hard? Think again&

A recent case involved the liquidators of a company alleging that a former director, in breach of his fiduciary duties to the company, caused the company not to pay VAT in the months before it went into liquidation.

Provisions in the Insolvency Act 1986 allow parties other than an insolvent company itself to litigate certain claims against its officers or former officers and any person who has been concerned, or has taken part, in the promotion, formation or management of the company, including claims for breach of fiduciary or other duties to the company. Only loss sustained by the insolvent company may be recovered.

The director argued that any loss that resulted from any breach of duty on his part was a loss to the company's creditors (and, in particular, HM Revenue and Customs) and not a loss to the company itself.

The High Court found that, by not paying VAT, the company carried on trade that it could not have undertaken otherwise. That trading increased the overall net deficit on the company's balance sheet. The increase in that net deficit could, in principle, represent a loss to the company and be (wholly or partly) recoverable from the director under the Insolvency Act. The failure to pay VAT was a breach of fiduciary duty, so it was possible for the liquidator to obtain a court order requiring the director to contribute personally in compensation for the breach.

If you are tempted to delay paying tax to free up working capital, don't – you could be personally liable if trading whilst insolvent.

While on the subject of VAT, don't forget that since the 1 January 2010:

- " the standard rate of VAT reverts to 17.5%; and

- " new VAT rules for EU cross-border supplies of services become effective. If you supply or receive cross-border services, services into the UK that were not liable to UK VAT before that date could now become liable and services out of the UK could cease to be liable to UK VAT. You will need to report services supplied to and taxed in other member states, and not just goods (as now), in your EC sales lists. Seek advice from your tax adviser or go to the HMRC Guidance at [www.hmrc.gov.uk/vat/ec-sales-lists](http://www.hmrc.gov.uk/vat/ec-sales-lists).

If you are facing problems with meeting tax liability, remember the HM Revenue and Customs Business Payment Support Service. This covers most taxes and duties including Income Tax, Corporation Tax, VAT, PAYE and National Insurance. To qualify, the tax payer must be:

- " in genuine difficulty;

- " unable to pay their tax on time; and

- " likely to be able to pay if HM Revenue & Customs allowed them more time.

Again, seek advice from your tax adviser or find out more from [www.hmrc.gov.uk/pbr2008/business-payment](http://www.hmrc.gov.uk/pbr2008/business-payment).

If you have any questions on issues raised in this article or director s duties and liabilities generally, please call a member of the Corporate Commercial Practice Group at Thomas Eggar on 0870 160 1300.

For more information, please contact Zoe Mitchell: [zoe@lcm.co.uk](mailto:zoe@lcm.co.uk) or call 0845 345 6969

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