



## JOINT AND SEVERAL LIABILITY OF COMPANY DIRECTORS (FINANCE BILL 2019-21, CLAUSES 97 & SCHEDULE 12)

Issued 20 April 2020

Text of ICAEW briefing for MPs on clause 97 and Schedule 12: Joint and several liability of company directors in **Finance Bill 2019-21** published by government on 19 March 2019.

This briefing submitted on 20 April 2020 has been prepared by ICAEW Tax Faculty and ICAEW Business Law.

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## TEXT OF BRIEFING FOR MPS ON THE **FINANCE BILL** BY ICAEW

### EXECUTIVE SUMMARY

1. We recommend that the clause and Schedule are withdrawn and that, once the current pandemic is past, fuller consultation is undertaken to ensure that the risk of unintended consequences is minimised.
2. We believe that Government has not considered sufficiently the potential ramifications of the measure beyond increasing tax take, in particular as regards the possible impact on enterprise, including company restructuring.
3. The legislation would give HMRC powers that may make doing business through UK incorporated companies significantly less attractive.
4. We responded to the original consultation on this proposal and were among several bodies to raise significant concerns. Please see our response **ICAEW REP 72/18** for more detail.

### THE MEASURE

5. A new regime to give HMRC a power to issue notices to make directors of companies, together with shadow directors and certain others connected to a company, jointly and severally liable for the company's tax liabilities when:
  - the liability arises or is expected to arise from tax avoidance, tax evasion, repeated insolvency or a penalty for facilitating avoidance or evasion; and
  - where the company begins insolvency proceedings, or is expected to do so, so that some or all of the tax liability will be lost to HMRC.
6. The measure will be effective from Royal Assent.

### MAJOR POINTS

7. If there are gaps in company or insolvency law, they might better be addressed through reform of those laws rather than increasing the powers of HMRC, which already has extensive powers not available to ordinary creditors. Further consideration or guidance may be required regarding any implications for office holders of insolvent companies where HMRC might recover as a creditor of the company, but also have rights of recovery against individuals under this legislation.
8. We do not believe that individuals should be made liable as a result of certain circumstances arising absent some wrongdoing on their part.
9. In particular, paragraph 3 of the Schedule makes individuals jointly and severally liable if they have a 'relevant connection' in the previous five years merely by being directors, participators, members, shadow directors or shadow members of the companies (or LLPs) referred to. In the case of participators in particular, there is no requirement for them to be involved in or responsible for the behaviour of the companies that has led to insolvency etc. Similar concerns arise in relation to paragraph 5.
10. The provisions on rights of review and appeal extend powers to HMRC in ways that we do not support and there are a number of drafting shortcomings which we have not commented on in detail here.
11. We believe that the legislation could benefit from further consultation and review. We have provided some detailed comments in Appendix 2. They are not exhaustive but relate largely to definitions as it is essential that the powers are closely defined to provide maximum certainty to business and minimise risk of unintended consequences.

## **OUR RECOMMENDATION**

12. Delete clause and Schedule and undertake another consultation.

## **FURTHER INFORMATION**

13. As part of our Royal Charter, we have a duty to inform policy in the public interest.