



Held to account

Insolvency practitioners should be aware of the risks associated with HMRC joint liability notices, argues **David Brindley**

Limited liability status companies and limited liability partnerships (LLPs) have always allowed for individuals to limit their exposure should the business eventually fail. In most cases, the corporate veil provides safety for individuals looking to invest in, or start, a business that creates growth and employment.

Yet some individuals have misused these corporate structures, accruing significant unpaid tax liabilities, either through:

- Phoenixing;
- Committing tax evasion or avoidance; or
- Facilitating tax evasion or avoidance.

To counteract this behaviour, the government has implemented joint liability notices (JLNs) in Schedule 13 of the Finance Act 2020. JLNs are a tool for recovering unpaid corporation tax, VAT, PAYE and certain penalty debts in extreme cases. They expand the scope of those liabilities from the insolvent

“**The individual may be held jointly and severally liable for the amount stated in the penalty notice**”

company to the directors or other responsible individuals of the company, causing them to be jointly and severally liable for existing and future liabilities.

For insolvency practitioners (IPs), understanding the implications of JLNs, the risks for directors and their role in the process is key to providing sound advice and managing insolvency cases effectively. Early risk identification and assessment is vital. This article uses the term ‘company’, but the legislation relating to JLNs also applies to LLPs.

Basic rules of the legislation

1. Phoenixing

The following conditions need to be met:

- **Old companies:** At least two companies that carried out a similar

trade must have entered an insolvency procedure within the past five years. Each must have had debts to HMRC exceeding £10,000 and representing at least 50% of the total creditor value. This includes tax that would have been due but for omissions in returns or failure to submit returns;

- **New company:** A new company has been incorporated or is trading in the same or a similar line of business as at least two of the old companies; and
- **Same individual:** The same person was involved in both the old and new companies within the past five years – whether as a director, shadow director or shareholder of an associated company. For the new company, involvement in management alone is sufficient.

If all these conditions are satisfied, the individual may be held jointly and severally liable for the outstanding tax debts of all relevant companies – both old and new.

2. Committing tax evasion or avoidance

In these cases, the individual may be held jointly and severally liable for the amount stated in the penalty notice. This will apply where:

- The company has engaged in tax evasion or tax avoidance arrangements that result in a tax liability unlikely to be paid;
- The company is either insolvent or there is a serious risk of insolvency; and
- The individual was partly responsible for the decision to enter into the avoidance or evasion arrangements.

3. Facilitating tax evasion or avoidance

In these cases, the individual may be held jointly and severally liable for the amount stated in the penalty notice. This will apply where:

- The company has facilitated tax evasion or avoidance and has either received a penalty or is undergoing proceedings before the First-tier Tax Tribunal in relation to such a penalty;
- The company is either insolvent or at serious risk of becoming insolvent; and
- The individual was a director, shadow director or shareholder of a close

Case study: Hospitality

An example of phoenixing activity

In 2018, two brothers launched two pubs in Manchester and Leeds under different corporate entities. Both businesses initially thrived, but by 2021, due to Covid-19 and mounting tax debts, they began to struggle. By early 2022, the companies entered liquidation, one leaving behind more than £300,000 in unpaid VAT and the other £6,000 of PAYE, which made up more than 60% of their total unsecured debts.

Seeing that the market was recovering, in 2023, the brothers launched a new catering service for wedding venues, based in Sheffield. Both brothers were again involved in management, although only one was listed as a director.

JLN issuance

In 2025, HMRC started an investigation into the second old company, while it was in liquidation, and requested documentation from the liquidator. It identified that while the second company had been trading, it had failed to submit its final two VAT returns and automatic VAT assessments were raised for £60,000.

HMRC determined that:

- The two old businesses and one new business operated in similar trades within the last five years (hospitality);
- The brothers had been involved in two failed companies within five years, both with significant unpaid tax debts; and
- The former companies’ accumulative tax debts were more than £10,000 and over 50% of the cumulative unsecured creditors’ value.

Despite the brothers’ appeals that the businesses were not similar in nature, HMRC concluded that, as all the companies related to

food and provided a service, they met the phoenixing requirements under the legislation. The matter was lodged at the tax tribunal.

Outcome

HMRC issued a JLN, holding both brothers liable for the total £366,000 of unpaid tax debts of both old companies. Had the brothers been notified this was the case when liquidating the former two companies together, they could have avoided this position.

In this scenario, during the early stages of the tax tribunal, the tax advisor was able to work with the IPs and HMRC in order to remove the JLN, but the advisor needed detailed knowledge of the legislation and there were prolonged negotiations.

Key takeaways for IPs

- Early identification of potential JLN risks is crucial when advising directors.
- Those involved in multiple failed businesses with unpaid tax debts should be warned of personal liability.
- HMRC may seek to investigate and ask for documentation from the company while it is in liquidation (or the individual who receives the JLN may request information to defend an investigation).
- HMRC takes a broad view of ‘similar trade’, especially in sectors such as hospitality.
- JLNs can impact personal finances, should they be implemented.



company at the time the penalty was imposed or proceedings began.

The impact of JLN on IPs

The ICAEW and R3 have encouraged early engagement with HMRC and thorough documentation of director conduct and decision-making. As such, one of the first steps in preparing for any appointment should now include assessing whether any individuals involved with the company could be at risk of receiving a JLN, be that through their historic conduct or if they have an intention to start a new, similar business.

“Practitioners should ensure that directors are fully informed of the risks associated with JLN”

JLNs don't create claims against the insolvent estate itself. Instead, they empower HMRC to recover directly from individuals, which can shift the creditor dynamic, especially in those liquidations where HMRC is the only

creditor. If HMRC is able to recover funds from directors personally, it may alter any overall recovery strategy.

The long-term consequences of JLNs for directors can be severe. Such notices can damage a director's reputation and significantly limit future professional opportunities – particularly if the notice results in personal bankruptcy. Practitioners should ensure that directors are fully informed of the risks associated with JLNs, especially in cases involving repeated insolvency. It is also important to highlight that bankruptcy resulting from a JLN may trigger disqualification proceedings, with serious implications for a director's future career and ability to hold office.

In some instances, the recipient of a JLN will request information and documentation from the company or request that an appeal is made on behalf of the company. While there are exceptions, for most matters the individual themselves will be able to appeal directly to HMRC. There may be some requirement for the IP to provide information from company records as part of any appeal process.

IPs may also be required to assist HMRC with any investigations into the companies that may result in a JLN.

Risks and opportunities

For IPs, JLNs present both risks and opportunities. Understanding the potential personal liability of directors, and the procedural steps involved with JLNs, is essential to managing insolvencies effectively.

IPs must carefully balance the need to protect the interests of creditors and the insolvent estate while providing clear and pragmatic information to directors facing personal tax liabilities, including guidance on accessing professional advice. By keeping informed about HMRC's increasing powers, IPs can ensure they are well-equipped to guide clients through one of the most challenging aspects of insolvency administration.



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Case study: Construction

An example of tax-evasive conduct

In early 2024, HMRC launched an investigation into a construction company run by three directors following discrepancies in the company's VAT returns. The enquiry revealed the company had been inflating input VAT claims by submitting invoices for materials and subcontractor services that were never purchased.

The total VAT liability identified by HMRC exceeded £1.2m, and HMRC concluded that two of the directors were aware of the irregularities and had personally approved the returns.

Insolvency and JLN issuance

Facing mounting debts and the prospect of enforcement action, the company entered voluntary liquidation in January 2025. With little left in the estate to satisfy

creditors, HMRC issued JLNs to all three directors shortly afterwards.

The JLNs were based on the following criteria:

- The company had engaged in tax-evasive conduct (deliberate misreporting of VAT) and there was an unpaid tax liability as a result;
- The directors were knowingly involved in the conduct; and
- The company was insolvent, and the tax liability was unlikely to be paid.

Outcome

The JLNs made the directors liable for the unpaid VAT of £1.2m. Despite appeals, the tax tribunal upheld the JLNs, and all directors were required to repay the liability personally.

The case also triggered a director disqualification investigation, and the two directors who had approved the fraudulent VAT returns faced restrictions on future company appointments.

Had any of the directors sought specialist tax advice earlier, there may have been statutory defences in place to challenge the liability, especially for the director who did not participate in the fraud.

