

# KIRKLAND ALERT

30 October 2018

## Restructuring Update: UK Autumn Budget

Yesterday's Autumn Budget saw three changes particularly relevant for the restructuring and insolvency market: business rates relief for the retail sector; the return of HMRC as a preferential creditor; and a measure to hold directors personally liable for a company's tax liabilities where there is a risk that the company may enter insolvency deliberately to avoid such liabilities.

**The UK Autumn Budget indicates three important changes for the restructuring and insolvency market.**

### *Retail sector — business rates relief*

**In a nutshell:** The Government will cut business rates by a third for retail premises up to a rateable value of £51,000. (A property's rateable value represents the rent for which the property could have been let on a certain date set in law — currently, April 2015.) This measure will be effective for two years from April 2019.

**Comment:** This reform will alleviate pressure on small retailers — but, of course, the retail sector as a whole is struggling. This will not address the underlying imbalance between bricks and mortar retailers and their online competitors. Not a single M&S, Debenhams or House of Fraser would have been saved by the announcement, as Labour's shadow business secretary has pointed out.

### *HMRC as preferential creditor*

**In a nutshell:** HMRC will return to being a preferential creditor in insolvencies, beginning in April 2020. The reform will only apply to taxes collected and held by businesses on behalf of other taxpayers (including VAT, PAYE and employee National Insurance contributions). It will not apply to taxes owed by businesses themselves, such as corporation tax and employer National Insurance contributions.

According to the Chancellor, this reform is “to ensure that tax which has been collected on behalf of HMRC is actually paid to HMRC”. The Treasury says this will ensure that an extra £185m in taxes already paid each year reaches the Government.

**Comment:** This is a partial reversal of the Enterprise Act 2002, which abolished the Crown's preferential status. The move is controversial as it effectively increases HMRC's share of insolvent estates, which will inevitably reduce returns to unsecured creditors (which, on average, are already only 4p/£). This underscores the necessity to accelerate measures to avoid insolvencies in the first place and promote rescue.

### *Tax abuse and insolvency*

**In a nutshell:** Directors and others involved in tax avoidance, evasion or “phoenixism” will be held jointly and severally liable for company tax liabilities, where there is a risk that the company may deliberately enter insolvency proceedings.

This measure follows the Government’s “discussion document” on tax abuse and insolvency in April 2018, which sought views on how to tackle abuse of the insolvency regime to avoid or evade tax liabilities, including through the use of phoenixism (the practice of carrying on the same business successively through a series of limited liability entities, usually companies, where each becomes insolvent in turn; each time this happens, the insolvent entity’s business, but not its debts, is transferred to a new “phoenix” entity).

This reform will be enacted in the Finance Bill 2019-20. It appears this change will apply across all taxes, in prescribed circumstances.

**Comment:** The main challenge will be to ensure this measure is sufficiently well-targeted, and with adequate safeguards, to avoid affecting distressed companies that enter into insolvency proceedings for reasons other than an abusive intention to avoid tax.

The Budget policy paper is [here](#); greater detail on the reform of HMRC’s status as a preferential creditor is [here](#).

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If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland author or your regular Kirkland contact.

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