



Confidentiality and disclosure in personal insolvencies (Scotland)

Introduction

HMRC is often approached by trustees in sequestration and trust deed cases asking for information and documents in connection with the taxpayer.

Section 18 of the Commissioners for Revenue and Customs Act 2005 (CRCA) places HMRC staff under a strict duty not to disclose information held by HMRC - except in certain limited circumstances. Breach of this duty could leave them open to disciplinary action or criminal prosecution.

Where disclosure may be permitted

In personal insolvency cases disclosure of information in connection with a particular taxpayer may be permitted only in limited circumstances. Generally, these are:

- disclosure pursuant to a court order (being an order specifically compelling disclosure, not a sequestration order)

- following a request by the trustee with the consent of the taxpayer; and
- following a request by the trustee without the taxpayer's consent.

The purpose of this bulletin

This bulletin provides more information about the circumstances where disclosure may be permitted for insolvency related matters where neither a court order requiring disclosure, nor the consent of the taxpayer has been obtained.

It also highlights additional guidance available and the relevant legislation.

Disclosures in personal insolvency

In personal insolvencies, the trustee doesn't have the same standing as an officeholder in a corporate insolvency, where the officeholder essentially 'stands in the shoes of the company' and is entitled to receive anything concerning the company's affairs that could have been disclosed to the company.

In personal insolvency any disclosure from HMRC will ordinarily require the taxpayer's consent. Notwithstanding the personal insolvency and the officeholder's powers, HMRC must treat the trustee as a third party and cannot ordinarily provide information about the tax affairs of individuals without their consent.

Therefore, we request that trustees seek consent, in the first instance, for any HMRC disclosure. HMRC's internal guidance on what constitutes consent can be found [here](#).

Disclosure made for the purposes of a function of HMRC

Without the individual's consent or the existence of a court order, HMRC may instead consider a functions disclosure under Section 18 (2)(a)(i) CRCA.

In these circumstances, HMRC might want to disclose information if it will improve the prospects of increasing any dividend to HMRC as a creditor. Our staff will need to consider the officeholder's increased prospects of recovery, as a result of the disclosure, together with the proportion of the total debt held by HMRC in the insolvency.

HMRC takes the security of personal information very seriously. So before making a disclosure, our staff must be persuaded that this will result in an increased dividend and be of direct benefit to HMRC. Each case will be judged on its own merits.

If we cannot supply the information a trustee has asked for, it will be because our staff have reviewed the individual's records and they do not meet the criteria for us to disclose for the purposes of HMRC's functions, or we do not hold the information requested. We will confirm in writing why we are not able to provide the information requested.

Further information

For more information on the confidentiality rules that apply to HMRC information, and guidance on the circumstances in which information may be disclosed, go to [gov.uk](https://www.gov.uk) and search Information Disclosure Guide.