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Claims against accountants - managing your exposure

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“Unprecedent times” is the phrase which is widely used to describe 2020 owing to the impact of Covid-19. So far, the pandemic has pushed business borrowings up five-fold. Added to the impact of the ongoing impact Covid-19 will be the impact of Brexit and this begs the question: will Covid and Brexit result in a drastic increase in claims against accountants? This article aims to give a snapshot of the potential risks to the accounting profession as a result of these two events.

As we know various government packages have been announced to ease the pain of Covid-19 lockdowns. Such support includes loans, tax relief and cash grants. For example, several funding and loans have been made available for SMEs and larger corporates. The Coronavirus Business Interruption Loan Scheme (CBILS) launched on Monday 23 March 2020. This is aimed at SMEs with turnover of up to £45 million and businesses can approach a list of accredited lenders with a sound borrowing proposal. SMEs may look to their accountants to assist with their borrowing proposals and to assist in explaining the terms of the loans. Those terms include (i) the Government will cover interest payments for the first 12 months, (ii) businesses will be responsible for repaying the debt and (iii) for loans in excess of £250,000, the personal assets of business owners, which may be requested as security, are only required to cover 20% of the loan amount (the part which is not covered by the government guarantee). One can anticipate accountants being willing to assist SMEs with preparing their borrowing proposals and even attempting to explain the terms of the CBILS.

On 27 April the new small business bounce back loans (‘microloan’) scheme was announced. This scheme has 100% Government backing for lenders and is intended as a fast track scheme, where there are no viability tests, and allows businesses the ability to borrow between £2,000 and £50,000 with the funds being sent to businesses within days. The loans will have no interest or capital repayments for the first 12 months and the interest rate has been set at 2.5% and no personal guarantees.

The exposure here to the accountant will arise from scenarios where the SMEs take loans under CBILS and are unable to repay the loans and the personal guarantees by directors/shareholders are called upon. There will be an inevitable scrutiny of the borrowing proposals and their soundness with the spotlight resting on the accountants' role in their preparation and questions will undoubtedly be asked at to whether the microloan should have been advised as opposed to the CBILS. Similarly, directors/shareholders who have given personal guarantees may question the adequacy of any advice or lack thereof when they agreed to the personal guarantees.

Added to the ongoing challenge of Covid-19 is the looming exit date for Brexit and undoubtedly many businesses have been distracted by Covid-19 and may not be prepared as they ought to be. For example, the changes in rules to VAT on EU imports and exports may result in business bringing claims against their accountants where they had a duty to advise on those changes and failed to do so. Post transition, businesses will need to either register in an EU member state of their choice to file a non-Union HMRC return; or register for VAT in every member state where they have customers (the registration threshold for non-established businesses is zero). UK businesses which incur EU VAT after 31 December 2020 will have to use a new system to make claims. Accountants who are charged which this responsibility on behalf of their clients must familiarise themselves with the deadlines (which are different for EU and non-EU businesses) and be aware that claims by non-EU businesses tend to take longer than those by EU businesses to process. Any failing on the accountants' part in this aspect of their service will expose them to claims.

As we all know, in times of economic hardships litigation increases. The examples above set out some areas of exposure to accountants in 2021. Accountants should therefore take care to ensure that the scope of their duty is made clear to their clients. For example, if they have been asked to provide information which is intended to form part of the client's borrowing proposal the accountant may wish to clarify their responsibility in respect of the borrowing proposal itself and ensure that the information they provide is accurate. Accountants should ensure that they are fully familiar with the options available to clients or the changing tax rules as relevant to the performance of their retainer. In short accountants, like many professionals, will face an increased risk in 2021 as a result of the impact of Covid-19 and Brexit.

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