

Disputed debts—the jurisdiction of the insolvency court to review tax assessments (National Crime Agency v GTG Management Ltd and Beauty & Skin Ltd)

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Restructuring & Insolvency analysis: The High Court, having reviewed the authorities on ‘reasonable grounds’ to suspect and the qualifying condition under section 317 of the Proceeds of Crime Act 2002 (POCA 2002), held that the National Crime Agency (NCA) did have standing to bring two winding-up petitions against two companies (with the same sole director-shareholder) and that the tax assessments—upon which the petitions were based—could not be disputed on substantial grounds in circumstances where they had not been appealed to the FTT. This case serves as an important reminder to debtors that it is generally not open to the insolvency court to review the manner in which tax assessments have been raised by HMRC and/or to investigate the merits of those assessments—assessments remain due as a statutory debt unless and until they are successfully appealed. Written by Rachael Earle, barrister, at Wilberforce Chambers.

National Crime Agency v GTG Management Limited and another company [\[2020\] EWHC 963 \(Ch\)](#), [\[2020\] All ER \(D\) 203 \(Mar\)](#)

What are the practical implications of this case?

The case serves as an important reminder that:

- the NCA need only demonstrate ‘reasonable grounds to suspect’ that profits arise as a result of criminal activity pursuant to [POCA 2002, s 317](#). The NCA is not required to show that its belief is beyond reasonable doubt or that it is prima facie believed and there is no requirement that criminal charges have been brought or are currently being considered against the debtor
- standing is somewhat of a red herring. Winding-up orders are class remedies and the court is likely to make the order even in the event that the NCA is found not to have standing to present the petition, in circumstances where the debtor is insolvent
- debtors cannot argue that petitions based on tax assessments are disputed on substantial grounds in circumstances where there is no appeal outstanding to the FTT. The insolvency court—save in exceptional circumstances where there is sufficient evidence of fraud or collusion—will not review the merits of tax assessments or the manner in which they have been raised. That is because the courts concerned with insolvency leave the establishment of a liability to tax to the statutory procedures that apply to those tax regimes

What was the background?

The hearing related to two consolidated cases: two winding-up petitions had been presented by the NCA against two companies (GTG and B&S) with the same sole director-shareholder.

Both companies failed to file any accounts with Companies House from incorporation to dissolution. GTG was struck off and dissolved in 2015 and B&S was struck off and dissolved in 2016.

The NCA began an investigation into both companies following concerns raised by their merchant services providers. Both providers had terminated both companies’ facilities due to the number of ‘card not present’ transactions being put through, the number of charge back requests from customers and the fact that the business models did not appear to match those described on the application forms.

Both companies were restored to the register pursuant to [section 1029\(2\)](#) of the Companies Act 2006 ([CA 2006](#)), on application by the NCA, to allow for corporation tax assessments to be raised and for the affairs to be investigated.

Neither company had paid any tax whatsoever during its lifetime. The NCA therefore raised corporation tax assessments, based on the merchant service providers' invoices, in 2018 against GTG totalling £231,314.40 and in 2019 against B&S totalling £271,089.60.

GTG served unaudited accounts and corporation tax computations in order to challenge the assessments, however it failed to provide any of the underlying source documentation and/or copies of books and records. B&S did not prepare any accounts or corporation tax assessments nor provide any books and records.

Neither company appealed the tax assessments to the FTT.

The NCA therefore petitioned to wind up the companies on the basis of the unpaid tax assessments.

What did the court decide?

The court was satisfied that the NCA did have standing under [POCA 2002, s 317](#) to bring both petitions because there was sufficient evidence to demonstrate that the NCA had reasonable grounds to suspect that both companies had made profit which was directly or indirectly the result of criminal activity. Deputy Insolvency and Companies Court Judge Schaffer held that, at the very least, there were reasonable grounds to suspect that both companies had traded fraudulently (within the meaning of [CA 2006, s 993](#)) given that no tax whatsoever had been paid.

Interestingly, the judge also held that as winding-up petitions are class actions, even if he had found that the NCA did not have standing, the companies were obviously cash flow insolvent and so he would have made the winding-up orders pursuant to *Parmalat Capital Finance Limited v Food Holdings Limited* [\[2008\] UKPC 23](#), [\[2008\] All ER \(D\) 124 \(Apr\)](#).

The court also held that the companies were unable to dispute the petitions based on the validity of the tax assessments because it is not open to the insolvency court to review the manner in which tax assessments have been raised by HMRC and/or to investigate the merits of those assessments (save for exceptional circumstances, where there is sufficient evidence of fraud or collusion, which were not present in this case). It is only if the tax payer has an extant appeal pending before the FTT that the court has a broader discretion, and in those circumstances a key factor in the exercise of the court's discretion is whether the court considers that the appeal has a real prospect of success.

Vieira v the Commissioners for her Majesty's Revenue and Custom [\[2017\] EWHC 936 \(Ch\)](#), [\[2017\] All ER \(D\) 32 \(May\)](#) followed.

Case details

- Court: Business and Property Courts of England and Wales, Insolvency and Companies List (ChD)
- Judge: Deputy Insolvency and Companies Judge Schaffer
- Date of judgment: 18 March 2020

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