HMRC - CH98660 - Personal Gain

Once you have attributed the deliberate wrongdoing to one or more of the company officers you should consider whether any of these officers, by fact or implication, have gained or attempted to gain personally from the wrongdoing. It is sufficient to show that each officer has gained or attempted to gain. It will not however always be possible to establish the full extent to which each officer has gained or attempted to gain, in which case you should issue the personal liability notices based on your best judgment of the amount they attempted to gain personally, see CH406200.

For example

the officer may accept that there was an actual or attempted personal gain from a deliberate wrongdoing that can be attributed to them, or

it may be clear from business records or the officer’s lifestyle that they gained or attempted to gain personally from the results of the deliberate wrongdoing.

For guidance on the use of ‘best judgment’ see VAEC1400. Although this applies specifically to VAT, the general principles should be applied to all taxes.

The recorded payment of normal salary, wages or dividends should not normally be regarded as the company officer gaining personally from the deliberate wrongdoing.

If at the time you are issuing the penalty assessment to the company you decide that there is no personal gain and that therefore the penalty is not to be apportioned to any of the company officers, you cannot later pursue any of the company officers for payment of the penalty even if the circumstances subsequently change. For example, if there is no personal gain and you do not issue a notice of liability to the officers you cannot later apportion liability to the officers if the company goes into liquidation, and there was no indication of this at the time you issued the penalty notice to the company.

Where however you have not yet established whether there was personal gain, or the degree of personal gain by all of the liable officers, but there are grounds to suspect that the company may soon become insolvent, you will need to take urgent action by following the guidance at CH98670.

This also means that you cannot change the proportion of the company’s penalty notified to any of the company officers, if the circumstances subsequently change.

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