What impact does the General Election have on the proposed return of Crown preference?

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The government announced its intention to reinstate HMRC as a secondary preferential creditor in the 2018 Autumn Budget. Following consultation on this policy, the draft Finance Bill 2019/2020 was published. It was then subject to further technical consultation.

Usually a policy is confirmed (or delayed or abandoned) in the Autumn Budget and if confirmed, will be included in the Finance Bill that is published shortly after the Budget. The legislation then proceeds through Parliament and the Bill is enacted as the Finance Act in the following spring before the end of the fiscal year.

We expected the Autumn Budget to reconfirm the proposal to reintroduce Crown preference and had it done so, the final form legislation would have been included in a Finance Bill 2019-20. That Finance Bill would currently have been making its way through Parliament and could have expected to obtain Royal Assent, becoming the Finance Act 2020, before the end of March 2020.

However, Parliament was dissolved on 6 November 2019 for an early general
election. The Budget (scheduled for 6 November) was cancelled and the timetable halted. Does this mean that there won’t be a Finance Act 2020 or that it will be delayed? In short, no.

A Finance Bill (and Act) is still required to renew Income Tax for the tax year 2020-21. As a result, a Budget early in the new year, probably in February, is necessary and will occur. But the precise content of that Budget, and the consequential Finance Act, remains unclear.

Much, obviously, depends on the outcome of the General Election but the question that then also arises is this “having got so far down the track in the previous Parliament, is it conceivable the tax and insolvency policies will be delayed or even cancelled?” The likelihood is not, given that both Labour and the Conservatives support such a policy. However, we are unlikely to know whether the draft Finance Bill 2019/2020 will be tabled in its current form or whether any amendments will be made following consultation.

There has been significant lobbying about the impact that the return of Crown preference will have, not least from funders who have requested, at the very least, that if the Government is intent on bringing in this policy, its effects be mitigated. Whether those concerns will be reflected in the Finance Act 2020 we can only guess, but until the Finance Bill is published next year, we do not know what the final form legislation will look like.

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