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Personal liability of director for PAYE/NIC In the case of Gary Wagstaff V Revenue and Customs [2022 UKUT 327 (TCC)] 6 December 2022 the Upper Tribunal (UT) considered the impact of a Creditors Voluntary Liquidation (CVL) on any claims HMRC had personally against the director of a company for outstanding PAYE/NIC and the statute of limitations. The UT held that despite the personal liability notice relating to periods more than 6 years old, the insolvency legislation would apply in that the limitation period ceased upon the company entering CVL provided that the debt was not time-barred at this point. The court went on to state that HMRC would be able to pursue the director, provided the company was still in CVL and the right to pursue the debtor would not cease until the company was dissolved.

Order to draw down pension benefits to satisfy a judgment debt In the case of Re Lloyds British Testing Ltd (in liquidation) Manolete Partners plc v White [2023] EWHC 567 (Ch) an order was sought to draw down benefits under an occupational pension scheme to satisfy a judgment debt. The court found that "the principal asset comprised with the respondent's pension fund was derived entirely from funds provided by the company and that the judgment debt was the result of the respondent's misfeasance and breaches of fiduciary duty whilst acting as the company's controlling director and shareholder". In these circumstances, the court decided to agree to the order sought.

Conduct reporting in Bounce Back Loan cases.

The Insolvency Service has begun sharing information with insolvency Office Holders about corporate entities that received Bounce Back Loans (BBLs) or other support under the Government's Covid support measures in 2020 and 2021. The purpose of the information provided is to assist the Office Holder by making them aware that the corporate entity has received assistance from a Covid support scheme. This is to be useful in instances where this information has been difficult to obtain, or where it has been deliberately concealed from the Office Holder.

Appointment of Administrators to company subject to sanctions: Re Cargologicair Ltd-[2022 EWHC 3316 CH]

Cargologicair Ltd was an airline transporting cargo internationally. To operate its business, the company was in possession of multiple licences which it required to fly the various routes (the "Flight Licences"). The company also owned two aircraft. The company's ultimate majority owner was a Russian national who became subject to sanctions. As a result, the company was unable to carry on its business and the owner was unable to sell his shares. As a consequence of the sanctions, the financing of the aircraft was withdrawn and the aircraft were repossessed. The company's bank also stopped operating its accounts and the Flight Licences were at risk of being withdrawn. In these circumstances, the company was unable to operate its business. It was also insolvent on the basis that it could not pay its debts as they fell due (due to the inability to access its bank accounts). The company was however balance sheet solvent. The sole director of the company applied to appoint Administrators (given the company's insolvency). The proposed Administrators requested approval from the Court to allow them to make payments and operate an Insolvency Services Account despite the sanctions that applied. They had also applied to HM Treasury's Office of Sanctions Implementation (OFSI) for licenses to deal with the company's assets ("OFSI Licence"). The Court duly gave permission and also granted the appointment of Administrators over the company despite the sanctions that are in place.

Employment awards increase

The Employment Rights (Increase of Limits) Order 2023 came into force on 6 April 2023. The maximum amount of "a week's pay" for the purpose of calculating wage arrears, accrued holiday pay, payments in lieu of notice and redundancy payment or for various awards including the basic or additional award of compensation for unfair dismissal has risen from £571/week to £643/week.

Guidance for Redundancy Payments for Directors

The Insolvency Service has updated their guidance on the eligibility of directors in making redundancy payments claims, see the link below for more information: <https://www.gov.uk/guidance/check-if-you-can-apply-for-redundancy-payments-as-a-company-director>

Insolvency Service Statistics Case numbers (E&W)				2022	2022	2023
	Q1	Q2	Q3	Q4	Total	Q1
Corporate						
Compulsory Liqs.	340	382	504	730	1,956	652
Creditors' Voluntary Liquidation	4,244	4,929	4,796	4,852	18,821	4,739
Administrations	275	321	273	362	1,231	318
Company Voluntary Arrangements	25	32	29	25	111	38
Receiverships	-	1	-	-	1	-
Personal						
Bankruptcies	1,667	1,657	1,730	1,624	6,678	1,737
Debt Relief Orders	6,491	5,789	5,727	6,211	24,218	7,034
IVAs	23,853	21,787	20,624	21,699	87,963	20,246

Source: Insolvency Service Statistics

Commentary

Corporate Between 1 January 2023 and 31 March 2023 (Q1 2023), there were 5,747 (seasonally adjusted) registered company insolvencies, as shown in Figure 1, comprising 4,739 creditors' voluntary liquidations (CVLs), 652 compulsory liquidations, 318 administrations and 38 company voluntary arrangements (CVAs). There were no receivership appointments. After seasonal adjustment, the number of company insolvencies in Q1 2023 was 4% lower than in Q4 2022, but 18% higher than in Q1 2022. The number of CVLs remained close to the **highest quarterly level since the start of the series in 1960 (Q2 2022)**. The number of compulsory liquidations also increased but remained slightly lower than levels seen prior to the coronavirus (COVID-19) pandemic. 1 in 197 active companies (at a rate of 50.8 per 10,000 active companies) entered insolvent liquidation between 1 April 2022 and 31 March 2023. This was an increase from the 38.9 per 10,000 active companies that entered liquidation in the 12 months ending 31 March 2022. Between 26 June 2020 and 31 March 2023, 42 companies obtained a **Moratorium**, and 20 companies had a **Restructuring Plan** registered at Companies House. These two procedures were created by the Corporate Insolvency and Governance Act 2020.

Personal After seasonal adjustment, the number of individual insolvencies in January 2023 to March 2023 (Q1) was 2% lower than in Q4 2022. Numbers of Debt Relief Orders (DROs) and bankruptcies were higher, but Individual Voluntary Arrangements (IVAs) were slightly lower. The total number of individual insolvencies was 9% lower than in Q1 2022. 1 in 408 adults (at a rate of 24.5 per 10,000 adults) entered insolvency between 1 April 2022 and 31 March 2023. This is an increase from the 24.1 per 10,000 adults who entered insolvency in the 12 months ending 31 March 2022. During Q1 2023, there were 29,017 (seasonally adjusted) individual insolvencies, as shown in Figure 1, comprised of 20,246 IVAs, 7,034 DROs and 1,737 bankruptcies. There were 23,179 Breathing Space registrations in Q1 2023. This is 34% higher than in Q1 2022. Of the 23,179 Breathing Space registrations, 22,770 were Standard Breathing Space registrations and 409 were Mental Health Breathing Space registrations.

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