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**NEWSLETTER**

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**DLA write-off & tax liability** In the case of *S England and another v HMRC [2023] UKFTT 313 (TC)* the First Tier Tribunal's decision that the tax liability created by the settlement agreement, where £909,063 of the directors' loan account of £1,009,063 was written off, created a tax liability for the directors as at the date of the settlement, was upheld on appeal. At para 39 of the judgment, reference was made to the consideration given to whether the position of the Liquidator as to whether there was any negligence or breach of fiduciary duty and whether the standard of care was reasonably to be expected of a skilled insolvency practitioner. It was noted that "... the appellants were able to take independent legal advice regarding the tax position and whether there would be a charge to tax and in which tax year this would arise."

**Monitoring Guidance for Volume IVA Providers** The Insolvency Service has updated its guidance "*Monitoring Volume Individual Voluntary Arrangement and Protected Trust Deed Providers*". The Insolvency Service expect as a minimum for there to be annual monitoring visits by RPB' to Insolvency Practitioners operating as or within a Volume Provider. Close monitoring should also take place where a Volume Provider is rapidly expanding or where there has been a material change to its business activities. The format and strategy for each visit should be determined on a risk-based approach. Where, in exceptional circumstances, a decision is made not to carry out an annual visit, the decision should be justified and recorded. Historically Volume Providers who mostly advise Consumer Debtors with credit card and loan debt were not being as regularly monitored and bad practices had arisen.

**Richard J Smith & Co provide IVA services but are not Volume providers** and the firm specialises in bespoke quality advice and the Supervision of complex individual and partnership IVA situations, including property and trading cases and high net worth individuals as opposed to consumer debtor situations.

**Agents to verify overseas entities** Companies House has published a list of some of the UK regulated agents who have an agent assurance code and can complete verification checks on beneficial owners of an overseas entity.

**An update to the implementation of the UNCITRAL Model Laws on Insolvency** On 10 July 2023, the Government issued an update on its intention to implement two model laws relating to insolvency which have been adopted by the United Nations Commission on International Trade Law ("UNCITRAL"). The two models proposed for implementation, would join and complement the Model Law on Cross Border Insolvency which the UK implemented in 2006 and 2007, are: (a) Model Law on Recognition and Enforcement of Insolvency-Related Judgments, which deals with cross-border recognition of judgments that are associated with insolvency proceedings and (b) Model Law on Enterprise Group Insolvency, which provides tools to manage and coordinate insolvencies within corporate groups, whilst respecting that each company within the group remains a separate legal entity. The Government reports that implementing these models would develop the international framework for the management of cross-border insolvencies and has announced that enacting the model laws will enhance the UK's highly regarded insolvency regime. The Government intends to develop the detail of the proposal to implement the two models, with the aim of resolving the issues that were raised by some of the respondents to the consultation before proceeding further. It is notable that the Government also states in its update that it is looking to legislate to implement the models at the "earliest opportunity", and so we should expect to see a Draft Bill soon.

**The case of Re Safe Deport Ltd (in liquidation)**, is an example of the court's preparedness to make orders against former directors to remedy instances of wrongful trading under section 214 of the Insolvency Act 1986. In this case, the liquidators were able to produce evidence of the point at which the company became cashflow insolvent and therefore the date on which the director knew, or ought to have known, that there was no reasonable prospect of the company avoiding insolvent liquidation. The case also serves as a warning to directors to avoid carrying out 'informal winding ups' and transferring assets to connected businesses in such circumstances.

**The UK Jurisdiction Taskforce (UKJT)**, which comprises senior judges, lawyers, a law commissioner and the FCA as an observer, is running a consultation on dealing with digital assets, for example cryptocurrency and non-fungible tokens (NFTs). Once the consultation has closed and the results have been considered, it is intended that the Legal Statement on Digital Assets and Insolvency Law will be published in early 2024. It will then be possible to see whether any further steps are necessary or appropriate. The UKJT will also be hosting a virtual consultation event in order to receive feedback on the consultation questions. The UKJT will provide further detail in due course.

Insolvency Stats. Case nos.(E&W)	2022 Q4	2023 Q1	2023 Q2	2023 Q3	22/23 Total	2022 Q3
<b>Corporate</b>						
Compulsory Liqs.	732	668	645	735	2,780	504
CVL's	4,878	4,799	5,197	4,965	19,839	4,807
Administrations	344	315	421	466	1,546	295
CVAs	25	38	56	41	160	29
<b>Personal</b>						
Bankruptcies	1,616	1,764	1,872	2,015	7,267	1,737
Debt Relief Orders	6,178	7,057	7,174	8,438	28,847	7,034
IVAs	21,508	19,500	16,911	13,965	71,884	20,246

Source: Insolvency Service Statistics

**Corporate Insolvency Statistics** Between 1 July and 30 September 2023 (Q3 2023), there were 6,208 (seasonally adjusted) registered company insolvencies, as shown above, comprising 4,965 creditors' voluntary liquidations (CVLs), 735 compulsory liquidations, 466 administrations, 41 company voluntary arrangements (CVAs) and one receivership appointment. After seasonal adjustment, the number of company insolvencies in Q3 2023 was 2% lower than in Q2 2023, but 10% higher than in Q3 2022. The last two quarters saw the highest quarterly insolvency numbers since Q2 2009 and the highest numbers of CVLs since the start of the series in 1960. The numbers of compulsory liquidations and administrations increased to levels last seen before the coronavirus (COVID-19) pandemic. Between 26 June 2020 and 30 September 2023, 46 companies obtained a **Moratorium**, and 22 companies had a **Restructuring Plan** registered at Companies House. These two new procedures were created by the Corporate Insolvency and Governance Act 2020.

**Personal Insolvency Statistics** After seasonal adjustment, the number of individual insolvencies in July to September (Q3) 2023 was 6% lower than in Q2 2023. The number of debt relief orders (DROs) was the highest quarterly number since their introduction in 2009. Bankruptcies also increased, but individual voluntary arrangements (IVAs) were lower. The total number of individual insolvencies was 15% lower than in Q3 2022. One in 441 adults (at a rate of 22.7 per 10,000 adults) entered insolvency between 1 October 2022 and 30 September 2023. This is a decrease from the 24.7 per 10,000 adults who entered insolvency in the 12 months ending 30 September 2022. There were 23,089 Breathing Space registrations in Q3 2023. This is 26% higher than in Q3 2022. Of the 23,089 Breathing Space registrations, 22,722 were Standard Breathing Space registrations and 367 were Mental Health Breathing Space registrations. Step Change Debt Charity registered 63% of all schemes between May 2021 (inception) and 30 September 2023.

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