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One in ten pubs face risk of closure

A recent market analysis shows that a tenth of all UK pubs are at risk of closure, with one in five classified as technically insolvent. The data showed that around 11% of all UK pubs have negative net assets and maximum credit risk score, with insolvencies jumping 12% year-on-year. These businesses will find it almost impossible to access extra funding unless the owners provide personal guarantees, which few are likely to do in the current climate. Workers in the pub trade have been among the chief beneficiaries of rises in the National Living Wage, which has been hiked by over 40% in five years. Even when pubs see improved turnover, wage costs mean that many pubs remain in the red for large parts of the trading week. Pubs are still restricting opening hours due to staff shortages, rising overheads and declining footfall. Many are having to sacrifice long term customer relationships on the altar of profitability as they focus on the busiest hours.

Tax Liability from written off Director Loan Accounts

In the recently reported case of *S England and another v HMRC [2023] UKFTT 313 (TC),* the First Tier Tribunal's decision that the tax liability arising from circumstances where £909,063 from an overdrawn directors' loan account of £1,009,063 was written off, created a tax liability for the directors as at the date of the settlement, and this was upheld on appeal. The defendants had argued that the write off had occurred over numerous tax periods, and the write off was contingent upon payment being made and should therefore become subject to tax at a later point. At para 39 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." This arose in response to claims by the defendant that the liquidators had acted in a way that fell below the standard required of an insolvency practitioner in not advising them of the timing/quantum of the tax charge.

It is important to note that directors are required to include such write offs on their Self-Assessment Tax Returns. Liquidators are not able to advise directors on their personal tax positions.

Trustees allowed to exercise discretion re litigation

In Prately Woods v Kicks & Anor it was determined that Trustees were correct in their decision not to join in with legal proceedings where there was no financial advantage to the estate, despite being requested, and latterly ordered by the Court, to do so. This overturned a troubling direction that the Trustees were required to become part of the proceedings, and forced to incur costs unnecessarily. At appeal it was found that Trustees had discretion and that there was no requirement to act in the interests of the creditors at all costs.

19% Increase in consumer and retail fraud

Latest figures from the Office for National Statistics (ONS) in its Crime Survey for England and Wales (CSEW) showed that consumer and retail fraud increased by 19%, reaching approximately 963,000 incidents. Over the past year, the fraud landscape has continued to evolve, and we have seen shifts in fraudsters targeting retail and e-commerce sectors, particularly through chargebacks, delivery fraud, and a cross-over into the telco sector via handset delivery scams. Often these techniques then impact consumers of financial services organisations via the use of mule accounts and authorised push payment scams. While most crime types didn't change significantly, there were notable increases in robbery, violence with injury and consumer and retail fraud.

Fashion Manufacturers hit hard

Insolvencies of fashion manufacturers have risen by nearly 25% year on year. Customers are switching to second hand platforms, and this has caused manufacturers to suffer hits to revenue and profits as they try to compete. This isn't a new phenomenon; eBay has been encouraging people to sell unwanted items on their platform for many years. However, the rise in popularity of Vinted, Depop and Etsy has really made a dent in this market and manufacturers are taking the hit.

Designer brands will weather the storm as there will always be people that want new high fashion and be prepared to pay a premium for it. However, fast fashion brands are suffering from this new form of competition. Consumers are suffering from the cost-of-living crisis and are prepared to look at second hand clothes, and consumers are also alive to the sustainability issues that surround fast fashion. Add in recent reports of failing to meet human rights obligations in the manufacturing supply chain, and it leads to a difficult time for manufacturers.

On the high street, Boohoo is reported to be attempting to restructure and break up its brand holdings as its share price has dropped by more than 85% in the past five years.

Insolvency Statistics

Insolvency Stats. Case nos.(E&W)	2023 Q1-Q4	2024 Q1	2024 Q2	2024 Q3	EST Q4	EST 2024 TOTAL
Corporate						
Compulsory Liqs.	2,827	830	877	812	840	3,359
CVL's	20,577	4,564	5,213	4,739	4,839	19,355
Administrations	1,567	383	452	418	418	1,671
CVAs	185	37	60	62	53	212
Personal						
Bankruptcies	7,684	2,029	1,935	3,750	2,571	10,285
Debt Relief Orders	31,717	8,226	11,699	12,311	10,745	42,981
IVAs	64,053	17,717	15,855	17,150	16,907	67,629

Source: Insolvency Service Statistics

Corporate Insolvency Statistics – Position at Q3 and likely 2024 outcome

In 2023, there were circa 25,000 registered company insolvencies. It is likely there will be similar numbers by the end of 2024 as above. The number of company insolvencies are the highest annual numbers since 1993. CVLs were at a record high number in the time series going back to 1960. Between 26 June 2020 and 30 September 2024, only 57 companies obtained a moratorium, and 30 companies had a restructuring plan registered at Companies House. These two new procedures were created by the CIGA Act 2020. The small numbers reflect the high professional costs of the procedures and that makes them currently inappropriate for SMEs.

Personal Insolvency Statistics – Position at Q3 and likely 2024 outcome

The number of individual insolvencies registered in 2023 was 103,454. There may be c.120,000 by 31 December 2024, representing a c.20% increase. The number of **Debt Relief Orders (DROs)** are likely to exceed 40,000 this year. DROs have become increasingly used and the entry requirements have been relaxed recently such that persons with debts of up to £50,000 may enter, limited assets may be retained and there is now no fee. **IVAs** accounted for 62% of all individual insolvencies in 2023, down from 74% in 2022 and are likely to decline again to circa 55% in 2024 due to the rise of DROs. The Official Statistics do not record the number of **Debt Management Plans (DMPs)** which are not formal insolvencies, but it is thought that there are circa 0.75m-1.0m people in the UK in DMPs being managed by specialist providers who work closely with the banks and loan and credit card lenders. People in the UK owed £1,865 billion at the end of August 2024. This is up by £27.4 billion from £1,837.5 billion at the end of August 2023, an extra £507.32 per UK adult over the year. The average total debt per household per UK adult including mortgages, was £65,665.

If you would prefer to receive your newsletter by email or have your name removed from our database, please contact claire.woodman@richardjsmith.com

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OCTOBER 2024 BUDGET MATTERS – HOW CAN WE HELP?

National Living Wage and increases to National Insurance

Prior to the budget, it had been leaked that the National Living Wage (NLW) would be increasing by 6.7% for adults to £12.21, with even larger increases for the younger age brackets. In addition, Employers' National Insurance rates were increased from 13.8% to 15%. Finally, and unexpectedly the rate at which Employers NI becomes payable was reduced from £9,100pa to £5,000pa. In mitigation, the Chanceller increased the Employment Allowance from £5,000 to £10,500.

What does this mean for your clients?

You may already have had panicked conversations with your clients. In reality, and as you have probably already explained, employers with wage bill lower than £400,000 will be better off from an Employers NI perspective (ignoring the increased wage costs overall if they have employees at NLW rates). Larger employers with payroll cost up to £1M will find themselves paying circa £7,000 more in employers NI, so it could be argued that SMEs are protected from this measure, certainly those at the very small end of the spectrum.

However, with the rise in NLW costs factored in, an employer with a payroll of £95,000 (4 NLW adult employees at current rates) will be £3,500 pa worse off from 5 April 2025. For an employer with 10 NLW employees that figure increases to the employer being £16,000 worse off in terms of wage costs.

We frequently advise clients who need to pivot from an employee led model to one that requires less staff, either through technological investment or from some other business change. The costs of making staff redundant can be prohibitive but we can assist with a formal restructuring of the business that allows the employer to access the Redundancy Payments Scheme. Typically, this would be via a **Company Voluntary Arrangement** which requires a Licensed Insolvency Practitioner to assess the company's plans and prepare a comprehensive debt restructuring. Companies that are in a CVA are eligible to have their Redundancy and PILON costs met from the scheme, which then claims against the CVA in due course. If you have clients that are concerned about their wage overhead but want to take steps to protect their business, then we can assist.

Capital Gains Tax

There had been much speculation that the rates of Capital Gains Tax (CGT) were going to be aligned to the same rates as Income Tax, however that didn't come to pass – to the collective sigh of relief to entrepreneurs. We had been quite busy prior to the budget dealing with **Members Voluntary Liquidations** for directors/shareholders concerned that there would be an immediate change to the rates of CGT. Whilst that didn't happen, we now know what is going to happen.

There are two primary issues, the first being that **the rate of CGT generally is increasing from 10 or 20%, depending on whether you are a basic or higher rate taxpayer, to 18% or 24%**. These changes came in with immediate effect. There are special rules about property gains and carried interest that aren't relevant to this piece.

The second issue is that of **Business Asset Disposal Relief (BADR)**. To qualify for BADR when realising shareholder value, it is required for the company to be placed into liquidation, and the distributions received therefrom can be treated as capital in the hand of the recipient. This is opposed to being treated as income/dividends and taxed accordingly. There is a lifetime allowance of gains of up to £1M, and the relief allows such gains to be taxed at 10% irrespective of whether the shareholder was a higher rate taxpayer – and that remains the case until 5 April 2025. From 6 April 2025 the rate of CGT payable will be 14% if BADR applies, increasing to 18% for gains made from 6 April 2026.

With that in mind we are expecting to see quite a few shareholders looking to liquidate their company prior to these respective changes. The decision to retire can be a long-drawn-out process, but an additional 8% in tax between now and 6 April 2026 is a compelling reason to investigate a liquidation – for those whose circumstances warrant it. The higher rates will be effective in 17 months.

We deal with liquidations of all sizes, the largest asset value we have dealt with was more than £15M and the smallest cases may have funds of only £50,000 or so, but typically we are dealing with assets of £500,000 on average. An extra £40,000 of tax would be payable on such cases (ignoring the minimal allowance that is available).

Contact us if you would like to discuss a client's potential needs for a solvent liquidation. We offer a free-of-charge initial consultation and can provide bespoke quotes for clients and their circumstances and can work with you and the client to quick timescales if necessary.