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# TECHNICAL UPDATE

## Wider implications for S423

In the case of [Invest Bank PSC v El-Husseini and others \[2023\] EWCA Civ 555](#) the court considered two preliminary issues of law and held that: "...while the separate legal personality of a company must be respected, and while the shareholders have no ownership of the company's assets, it does not follow that the director has not done anything at all" and therefore the debtor's acts can fall within s423 and secondly that "...the meaning of "transaction" in section 436 is very broad and includes any "arrangement". In the present case, the steps that the debtor took to diminish the value of his shares in a company can be regarded as being such an arrangement."

## Part 26A cram down successfully challenged

In the case of [Re Great Annual Savings Co Ltd, \[2023\] EWHC 1141 \(Ch\) \(16 May 2023\)](#) HMRC successfully challenged the part 26A cram down proposed by the company. A key area was the re-ordering of priorities, where it was proposed that payment of certain unsecured creditors be made at a higher p in £ than the anticipated payment to HMRC in respect of their preferential claim under the proposed scheme. The judge concluded that the plan is not a fair one and therefore does not meet the requirements of the legislation. The judge also stated that if he would have had to use his discretion under the legislation

then "Given its status as a major in the money creditor, and the strong terms in which it has voiced its objection, not only in light of the facts of this particular case but also given its critical public function as the collector of taxes, I think HMRC's views deserve considerable weight. " The lack of engagement by HMRC prior to the proposal being finalised was not considered to be a factor.

## Debt respite scheme, injunction & abuse

In the case of [Ivan Kaye v Amanda Lees \[2023\] EWHC 758 \(KB\)](#) the court considered an application to continue the injunction against the debtor being able to apply for a mental health moratorium. Whilst this was not granted, the judge did state that if the circumstances leading to the injunction were repeated, i.e. a mental health moratorium being used to prevent the sale of the flat without advancing any realistic plan to pay the sums owed, then a challenge to the lawfulness of the debt advisor's decision may be possible, putting the debt advisor at risk to costs.

## Challenges to both expenses and remuneration

In the case of [Blair Carnegie Nimmo and Alistair Mcalinden, as the former joint administrators of Future Renewables Eco Plc \(in administration\) \[2023\] CSOH 27](#) the court was asked to agree the fees and outlays of the

administrators who were replaced by a meeting of creditors. A reporter was appointed to review the fees and outlays and his recommendations were challenged by the new administrators. The judge has referred various matters back to the reporter for consideration: whether category 1 expenses were "reasonably incurred" and whether the work for remuneration claimed is "reasonable, proportionate and beneficial" with a request that the reporter detail specifically areas where he believes reductions should occur. Interesting comments may be found on page 11 of the judgment in respect of time posted and narrative.

## Charities Act 2022 implementation

The [enactment of the next tranche of the Charities Act 2022](#) should occur in June 2023 and will include disposing of or mortgaging charity land by allowing a disposition or mortgage of charity land by a liquidator, provisional liquidator, receiver, mortgagee or administrator.

## PSC and Discrepancy Reporting

[The Money Laundering and Terrorist Financing \(Amendment\) \(No. 2\) Regulations 2022](#) came into force on 1 April 2023 and the [guidance](#) has been amended to reflect the changes in the need to only report a material discrepancy.

## Scotland & Personal Insolvency

The [Bankruptcy and Diligence \(Scotland\) Bill](#) was introduced on 27th April 2023. There is an [ICAS article](#) giving further information.

## Revoked or retained EU Law

The government has updated its [schedule of revoked or retained EU law](#).

## Digital Assets

On 10 May 2023, UNIDROIT (the International Institute for the Unification of Private Law) adopted its [Principles on Digital Assets and Private Law](#). The UK [Law commission held a consultation](#) on this issue last year but have yet to report on any policy development.

## SIP3.3 Scotland

The JIC are reviewing SIP 3.3 and they are now [inviting comments](#) on the revised version. Harmonisation between the latest version of SIP 3.1 and SIP 3.3 has been attempted where possible and more information maybe found in this [ICAS article](#).

## HMRC Improvements to form VAT7

HMRC published an [Insolvency Guidance note on Improvements to form VAT7](#) on 25 April 2023. However, do remember that if you are still realising assets you should not de-register until all taxable supplies have been realised in accordance with HMRC [VATDREG08400 - Cancellation in particular cases: insolvency, death or other incapacity](#) guidance.

## VAT deregistration mailbox

HMRC have issued [insolvency guidance on 30 May 2023](#) to confirm that the trial mailbox has been made permanent.

## Updated HM Land registry guide on restrictions

The [Practice guide 19: notices, restrictions and protection of third party interests in the register](#) was updated on 11 April 2023.

## ICAEW visit information

The ICAEW [posted about the changes in the information being requested when conducting visits](#). The RPBs, including the IPA, now want to know which cases have bounce back loans and whether RP14 & 14As have been submitted on a case.

## Objection to strike off

The government has set up a webpage where an [objection to strike off a company may be easily registered](#).

## Review of redundancy payment work by IPs

The Insolvency Service have published a report on [Thematic review by the Insolvency Service of monitoring by ICAEW, ICAS and IPA of redundancy payment work by Insolvency Practitioners](#) on 28 April 2023.

## Confidence in the Insolvency Regime Report

The Insolvency Service published its [Confidence in the Regime 2022 to 2023 - creditors, legal professionals, directors and](#)

[academics](#) report on 14 April 2023.

## Annual Review of IP Regulation 2022

The [Annual Review of Insolvency Practitioner Regulation 2022](#) was published on 28 April 2023.

## RPO Proof of Debt Report

The [Redundancy Payments Office have made changes to their proof of debt report](#) after feedback from the insolvency profession.

## Statistics Consultation

A [consultation has been opened on Insolvency Service Official Statistics](#) and comments should be sent by Friday 30 June 2023 to [statistics@insolvency.gov.uk](mailto:statistics@insolvency.gov.uk).

## Insolvency Service Newsletter

The [Spring 2023 edition](#) of the Insolvency Service newsletter is available with articles on: action against those convicted of covid support abuse, an update on compensation for postmasters as part of the Post Office Horizon IT Inquiry, and the launch of the new Official Receiver Central Case and Aftercare Team providing a single entry point for most new cases.

## Dear IP pre 2020 archived

The [pre 2020 issues of Dear IP are going to be archived](#) and a link to the archive placed at the start of each chapter.

## ICAEW CPD

A reminder that [ICAEW CPD requirements](#) change from 1 November 2023.



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Joanne is also a partner of both The Compliance Alliance and JOH Consultancy which offer a range of services that may be tailored to an individual IP's needs.