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# TECHNICAL UPDATE

## Carrying on Business

In the case of [Durkan V Jones \[2023\] EWHC 1359 \(Ch\)](#) the court determined that for the purpose of S265(2)(b)(i) “carrying on business in the jurisdiction” included having a rental property in the country.

## 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.”

## Part 26A v HMRC

In the case of [Re Prezzo Investco Ltd \[2023\] EWHC 1679 \(Ch\)](#) HMRC opposed another Part 26A restructuring plan, but in this case the court were not willing to use

their discretion where all the other requirements had been met. Whilst the initial plan proposed was to pay HMRC what would have been available under an administration scenario, the amount proposed to be paid to HMRC was increased by a further £2million, making it in excess of what would have been available under an administration. Suggestions of this setting a precedent for companies to avoid paying taxes was rebuffed with the judge being clear that each plan should be assessed on the facts of the case.

## Administration order sought, winding-up order made

In the case of [Aartee Bright Bar Ltd \(in administration\) v Aartee Steel Group Ltd \[2023\] All ER \(D\) 88 \(Mar\)](#) the administrators of one of the subsidiary companies who were owed money by the holding company sought to have the holding company placed into administration. The court saw no purpose in placing the company into administration as the only assets to be realised were shares in the two subsidiary companies, which were both in administration.

## Trustees’ judgment appropriate

In the case of [Patley Wood Farm LLP & Ors v Kicks & Anor \[2023\] EWCA Civ 901](#) the court reinforced that “Trustees are experienced professionals who have a statutory discretion as to what steps they

should take. It is not the Trustees’ duty to act in the interests of the creditors *at all costs*.”

## Changes to the High Risk Third Countries

[The Money Laundering and Terrorist Financing \(High-Risk Countries\) \(Amendment\) Regulations 2023](#) came into force on 27 June 2023 changing the high risk third countries under schedule 3ZA.

## FSMA Bill 2023 received Royal Assent

The [Financial Services and Markets Act 2023](#) has received royal assent.

## Debt Packagers’ Remuneration

[The Consumer Credit \(Debt Packager Remuneration from Debt Solution Providers\) Instrument 2023](#) came into force on 2 June 2023 and prevents debt packagers from receiving fees from debt solution providers although there is a period of transition for existing contacts.

## Scottish Law Moveable Transactions

[The Moveable Transactions \(Scotland\) Act 2023](#) came into force on 13 June 2023. This [ICAS article explains the impact for the insolvency profession](#).

## Corporation tax and liquidations

This is an interesting article by ICAS on the [impact of the new corporation tax rates](#) from April 2023.

## FCA Consumer Duty

The [FCA Consumer Duty](#) came into force 31 July 2023 and [guidance](#) was issued earlier in this year.

## Monitoring Guidance for Volume IVA Providers

The Insolvency service has updated its guidance "[Monitoring Volume Individual Voluntary Arrangement and Protected Trust Deed Providers](#)".

## Insolvency Service guidance for Debt Advisors

The Insolvency Service has published [Mental Health Crisis Breathing Space Guidance Changes Following 2023 High Court Judgments](#).

## Personal Insolvency Framework

The Insolvency Service has published its consultation outcome of its "[Review of the personal insolvency framework: Summary of responses and next steps](#)". The Government aims to publish proposals for reform of the personal insolvency framework early in 2024.

## HMRC Insolvency Guidance

HMRC have published the following Insolvency Guidance:

- [Filing of Company Tax Returns \(CT600 \(2023\) Version 3\)](#)
- [Submission of P11D - what is changing](#)

## HMRC Fraud Investigations

HMRC have published their [Code of Practice 9: where HMRC suspects fraud \(COP9\)](#) on 14 June 2023.

## NCA

The [NCA June report](#) is available with some interesting examples of money laundering. The New SAR Portal Launch is on 18 September 2023 and the [New SAR Portal Overview](#) has been published.

## ICAS Vulnerable Person Tool Kit

ICAS have produced a "[Vulnerable Person Tool Kit](#)" to help deal with vulnerable people, including a checklist.

## ICAS Monitoring Findings 2021/22

ICAS have made available their [webinar recorded in August 2023](#), together with slides on common compliance issues.

## Trust Registration

ICAS has ensured the HMRC [Trust Registration Manual](#) clarifies this excludes IVAs and PTDs due to commercial transaction purpose.

## Consultation outcome of UNCITRAL Model Laws in Insolvency

The Insolvency Service has published the [consultation outcome on changing UK law to implement two model laws in the field of insolvency](#), which have been adopted by UNCITRAL.

## 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.

## Law Commission Report Digital Assets

The Law commission published [Digital Assets: Final Report](#) on 28 June 2023.

## ICAEW Reprimand

The Insolvency Service have [published their reprimand against the ICAEW](#), which is the first use of their powers to take action against an RPB. Their expectations of the RPBs is certainly interesting reading.

## Dear IP

The latest Dear IP is now available: [Dear IP 159](#) and [Improvements to the way we send RP14a reminders](#).

## Analysing bank statements

We have recently received a demonstration of the Prism 339 software, which is built for IPs to identify transactions for SIP 2/DCRS purposes from banking data, and to trace monies to be recovered in a case. The software provides the analysed data in various formats helping to identify trends and key financial transactions. The benefit obtained for the small cost per bank account for the service is also impressive. More details can be found at [www.Prism339.com](http://www.Prism339.com).



Joanne Harris has 22 years' experience in insolvency dealing with all case types. She was formerly a Director of Technical and Compliance in a top 20 firm before starting her own business to supply technical services for insolvency practitioners without a compliance resource.

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.