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# TECHNICAL UPDATE

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## Tax to be deducted from statutory interest

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In the case [Joint Administrators of Lehman Brothers International \(Europe\) \(In Administration\) v Revenue and Customs Commissioners \[2019\] UKSC 12 \(13 March 2019\)](#) the court was asked to determine whether statutory interest could be considered “yearly interest” under tax legislation. Yearly interest poses an obligation on the IP to withhold notional tax from the statutory interest to be paid and remit this to HMRC. The court determined that in this case statutory interest was considered to be yearly interest and therefore notional tax needed to be deducted. There seems to be conflicting information about whether all statutory interest is deemed to be yearly interest or whether it depends on the period that statutory interest is calculated, i.e. if you have not paid the main debt in full within the 12 months from appointment, then it will be considered yearly interest for tax. Hopefully R3 guidance will clarify this issue.

## Fixed Fee and S245

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In the case of [Crumpler and another \(Liquidators of Peak Hotels and Resorts Limited\) v Candey Ltd \[2019\] EWCA Civ 345 8 Mar 2019](#) the court considered whether security for a fixed fee for services provided by solicitors should be for the fixed fee amount in total when considering what was valid under s245. The court held that s245 provided for “the value of any goods or

*services supplied* by way of consideration for a floating charge is the amount in money which *at the time they were supplied* could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business...”. Therefore while there was a fixed fee agreement, the amount captured by the security when applying s245 would only be for the value of the services provided after the charge was in place.

## Challenge to appointment of liquidators

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In the case of [Green v SCL Group \[2019\] EWHC 954 \(Ch\)](#) the High Court has appointed the administrators of a number of companies in the “Cambridge Analytica” group to be compulsory liquidators following the collapse of attempts to sell the companies’ businesses. The appointment was opposed by a creditor of the companies on a number of grounds, including that:

- The administrators had a conflict of interest as their fees were being paid by the parent company of the group;
- the administrators had breached their duty of candour to the court at the original administration hearings and had not been competent;
- the administrators had demonstrated actual bias against the creditor on a number of levels making them unfit to be liquidators;
- the administrators had breached duties imposed by data protection law.

Whilst the court found some issues none were sufficient to prevent

the administrators’ appointment as liquidators. Interestingly, the court also looked at what level of investigatory action an insolvency office holder can legitimately seek to undertake in the context of a business whose entire business model is potentially questionable and where there is parallel regulatory action. The decision is also particularly helpful in discussing the proper approach of administrators to outstanding data subject access requests made to the companies over which they are appointed, and the proper response to Enforcement Notices issued by the Information Commissioner’s Office.

## Out of hours Administration appointment & e-filing

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In the case of [Wright and others v HMV Ecommerce Ltd and another \[2019\] EWHC 903 \(Ch\)](#) the court was asked to consider non-compliance with the Insolvency Practice Direction which came into force in July 2018 where there had been an out of hours administration appointment by the directors. In this case, the directors filed notices of appointment electronically at 5.54pm. The Practice Direction states that electronic filing may not be used for appointments outside court hours and rules 3.20 to 3.22 will apply. However, rules 3.20 to 3.22 apply to appointment by a qualifying floating charge holder. The judge did not reconcile the ambiguity, but did grant a declaration in respect of the validity of the administrators’ actions and to waive any non-compliance.

## Scottish Legislation

The Small Business, Enterprise and Employment Act 2015 (Commencement No. 7, Consequential, Transitional and Savings Provisions) Regulations 2019 came into force on 6th April 2019 and may be found [here](#).

### Still tidying up revocation of 1986 Insolvency Rules

The Bankruptcy (Financial Services and Markets Act 2000) Rules 2001 and the Insurers (Winding Up) Rules 2001 (Amendment) Rules 2019 SI 754/2019 came into force on 23 April 2019 and a copy may be found [here](#). The Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 also came into force on 23 April 2019 [here](#).

### New email address for out of hours appointments

The Insolvency Service has updated its guidance and provided a new email address for out of hours service of notices of appointment to the High Court in London. Fax and email contact details may be found [here](#).

### 107th Practice direction

The Ministry of Justice has published 107th Practice Direction update which provides for related No Deal EU exit implications. Further information may be found [here](#).

### Chancery Guide updated

The Chancery Guide was updated on 25 April 2019 to include information about the operation of the new Insolvency and Companies Court Interim

Applications Court which may be found [here](#).

## MVL to CVL

It has come to my attention that the ICAEW takes the view that being the MVL liquidator (i.e. including a liquidator who had no relationship prior to being appointed as MVL liquidator) creates a significant relationship and therefore an MVL liquidator is only able to be a CVL liquidator if the creditors are to be paid in full. I would suggest contacting the ICAEW to review with them the ethical implications of any MVL to CVL liquidator appointment you may have or are considering.

### PPI mis-selling and the approaching deadline

The STEP UK Practice Committee has issued a briefing note which may be found [here](#). The briefing note highlights the risk of claims being brought against Trustees in bankruptcy and Supervisors of IVAs if they fail to make a PPI claim before the 28 August 2019 deadline. The briefing note states that the Official Receiver has indicated it is reviewing closed cases back to 1 January 2000.

## Tax, Tax & more Tax

R3 has issued a technical alert providing both information from HMRC and details of outstanding issues from R3 which may be found [here](#). A quick reminder that gsi has been removed from HMRC email addresses from 31 March 2019.

### New RP14 & 14A guidance

The Insolvency Service have issued new guidance on uploading RP14 & 14A to the new software system. The system went live from 19

March. The guidance may be found [here](#).

## HM Land Registry Guides

HM Land Registry has recently updated five practice guides: Notices, restrictions and protection of third-party interests (PG19) found [here](#). Evidence of identity: conveyancers (PG67) found [here](#). Charities: advice for applications sent to HM Land Registry (PG14) found [here](#). HM Land Registry plans: boundaries (PG40s3) found [here](#). Corporate insolvency (PG35) found [here](#).

## Financial controls guidance ICAEW

The ICAEW has updated their financial controls for insolvency cases guidance which is available [here](#).

## Money and Pensions Service (MAPS)

MAPS published a press release announcing its official launch on 8 April 2019 which may be found [here](#). An executive summary and listening document have also been released and may be found [here](#) and [here](#).

## Webinars

We have recently added five more webinars to our library:

- SIP1: what's the fuss over file notes?
  - Case law - last 18 months to Feb 2019
  - Compliance Hot Topics
  - SIP 6 - Decision procedures in insolvency
  - GDPR and the RPB Guidance
- In June 2019 the following webinars will also be added:
- Cyber-security
  - Fixed & Floating allocations and SIP 14
  - Money Laundering Regulation 2017 for IPs



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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.