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SECTION 423 AND EMPLOYEE BENEFIT TRUSTS

Employee Benefit Trusts (“EBTs”) are arrangements that provide financial benefits to employees and their families. Typically, monies are paid from a company into an EBT and then onwards to a sub-trust, from where beneficiaries receive interest-free loans that are not required to be repaid.

Created ostensibly as an incentive for employees, many loans from EBTs are disguised remuneration, to avoid taxes being deducted at source from directors’ salaries. HMRC have, for some time, had such tax avoidance schemes in their sights, as have office holders.

Section 423 IA 1986 codifies the law relating to transactions of assets at an undervalue, which have either been made with the deliberate intention of depriving creditors of such assets or otherwise prejudicing their interests.

Under the Civil Procedure Rules, the Court has the power to strike out the whole or part of a statement of case that has:

- (a) no reasonable grounds for bringing or defending a claim; or
- (b) which is an abuse of process or likely to obstruct the just disposal of proceedings.

On 4 February 2021 in *Hall (as Liquidator of Ethos Solutions Limited) v Nasim & Ors [2021] EWHC 142 (Ch)*, the High Court struck out some of the claims which the liquidator had brought under s423 but refused to strike out certain other claims.



It is the ICC Judge’s comments in respect of the general application of s423 in tax avoidance cases involving EBTs that will be of most interest to practitioners.

The Respondents argued that pursuing individuals under s423 for tax liabilities assessed against a company, which had chosen not to appeal, would prevent these individuals from being able to personally appeal against such assessments.

The Judge agreed that in cases involving EBTs, where HMRC is “*the only creditor of significance*” there was an “*appreciable risk*” of the standard processes of appeal becoming unavailable to the individual.

Editor’s note

The Judge refused to strike out certain of the Liquidator’s claims brought under s423. In respect of the possibility that a successful s423 claim would mean individuals might not be able to appeal an assessment for tax she stated: “*the argument is of sufficient complexity and significance to warrant full submissions and examination at trial*”.

There were over 60 Respondents in *Hall*, so the inability to contest personal assessments for tax could have worse ramifications than compared to the more standard EBT scenario where only the directors have benefitted. It will be interesting to see how this complicated issue will be addressed at trial.

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