

solvent liquidations

At McTear Williams & Wood we provide case specific advice that is tailored to each client. However, at an initial meeting to discuss a possible solvent liquidation we would expect to cover the following points:

options for ending the life of a solvent company

We will explain the options open to directors, which are:

- Informal winding up followed by director(s) striking off application (S1003 Companies Act 2006) or
- Members' voluntary liquidation ("MVL") (Insolvency Act 1986)

recent developments

Recent changes in tax legislation and concessions have affected the treatment of dividends and capital distributions at the end of a company's life. We will explain how these changes apply to you:

- The Enactment of the Extra-Statutory Concessions Order 2012 brought to an end ESC C16 which allowed pre striking off dividends to be treated as a capital receipt
- In January 2012 the Treasury Solicitors' Office removed its concessions which allowed return of capital up to £4,000 and has stated categorically that it will not attempt to recover unauthorised distributions of share capital of any amount made prior to dissolution
- MVL advertising and meeting costs have been reduced under the Insolvency (Amendment) Rules 2009 and 2010
- Restoration periods have changed from 2 years for a MVL or 20 years for a striking off to a standard 6 years (CA2006) except in cases of personal injury

the criteria we use to decide which process to use

When deciding which process will best suit your circumstances we work with your tax advisor to establish the following:

- Shareholders tax affairs: return of capital versus income, CGT base cost of shares, availability of entrepreneurs' relief, margin rates of tax
- Company's tax affairs: utilisation of trading losses, capital gains on disposal of assets
- Trading activity that could result in claims or potential for contingent liabilities and the availability of resource to handle an informal winding up process
- Costs benefit analysis: tax benefits and risk reduction compared with liquidation costs

informal winding up of the company

The key points that apply if the company is wound up informally and an application is made by the director(s) to have it struck off are:

- Distributions under £25,000 are treated as capital receipts in the hands of shareholders
- For distributions over £25,000 the whole amount will be assessable as income in the hands of shareholders

continued overleaf

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continued

- If directors fail to follow correct procedures this may result in clawback of funds/ penalties. This is particularly relevant for larger companies without common directors and shareholders
- There is no protection against contingent and unknown creditors
- Directors often require specialist advice regarding pension, employee and other creditor issues
- Certain criteria must be fulfilled if this process is to be used. For example, the company must not have changed its name, traded in the previous three months and the tax authorities must have been notified of the winding up

members' voluntary liquidation

If the company winds up via a members' voluntary liquidation the following will be significant:

- All distributions (without limit) are treated as capital receipts in shareholders' hands
- The liquidator is responsible for the process, thus taking the onus to follow the correct procedure from the directors and reducing their personal risk
- The liquidator has specific protection against unexpected creditors making claims after the funds have been distributed
- This route is not usually cost prohibitive if planned correctly as preparatory work can still be performed by accountants and directors to save costs
- We do not provide tax advice but our team will work with your existing advisors
- Our estimated time costs can be as low as a fixed sum of £3,000 plus VAT per company
- Other costs for advertising and specific bond start at £300 plus VAT
- Further points to note:
 - Commencement of liquidation will start a new accounting period for tax purposes
 - Early distributions can be made subject to receipt of appropriate indemnity and satisfactory responses to our general enquiries
 - Statutory interest is payable at the current rate of 8% on creditors' claims so it is wise to settle with creditors pre liquidation
 - The liquidator has no power to declare a dividend. It may be useful, therefore, to declare a dividend in order to use up basic rate tax allowances pre liquidation
 - Although assets can be distributed in specie be aware that liquidation may cause automatic termination of contracts or leases
 - A members' voluntary liquidation can be useful for tax efficient restructuring including Section 110 (Insolvency Act 1986) reorganisations
 - No share transfers can be effected after the commencement of the liquidation without the agreement of the liquidator
 - The company must cease to carry on business on liquidation except so far as may be required for its beneficial winding up

For more information or initial free of charge advice contact Gerard Smith our solvent liquidation specialist on 01603 877647, fax 01603 877549, email gerardsmith@mw-w.com or call our hotline number below.

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