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Solvent Liquidations - Tax Planning and other issues

A members' voluntary liquidation ("MVL") can be a tax efficient exit option for the shareholders of a solvent company.

Under current legislation shareholders receiving a distribution through an MVL or, where appropriate, using Extra Statutory Concession C16, may benefit from the business asset taper relief provisions.

The Government has recently announced that as from 6 April 2008 all capital gains will be taxed at a flat rate of 18% irrespective of the marginal income tax rate of the taxpayer concerned. Also that the current systems of taper relief and of indexation allowance will be abolished. Alongside these reforms the government will introduce a tax relief for many entrepreneurs that will deliver a 10% tax rate for up to the first £1 million of lifetime capital gains.

Introduction

An MVL is a statutory procedure for realising assets, agreeing and settling liabilities and distributing surplus funds to shareholders. The majority of MVLs arise as a result of:

- Tax planning - Taking advantage of changes in tax legislation when it may be appropriate to withdraw capital, or alternatively divide the business interest between shareholder groups and mitigate or defer tax liabilities (S.110 reorganisations).
- Retirement planning - Shareholders who are considering retirement and wish to realise the value of their investment. A liquidator has the power to accept or reject claims of creditors and can disclaim onerous assets, such as leases, if appropriate.
- Group reorganisations - The removal of dormant, non-trading or redundant companies in order to reduce costs, group restructuring or the release of capital for use elsewhere within the group.
- End of specific purpose - The orderly closure of a company which has achieved the specific purpose for which it was incorporated.

Tax planning

An MVL is not simply a case of passing a resolution and completing the winding up.

It is important that the process is planned and the company suitably organised in order to minimise tax liabilities and maximise any commercial advantages. For example, consideration should be given to either making a pre-liquidation "income" distribution or a post-liquidation "capital" distribution. Pre-appointment planning is particularly important at present, as those anticipating paying CGT at a certain rate, whether 10% or 40% or some rate between, may find a different rate applying to their capital gain after 6 April 2008. Individuals who do not benefit from the current business asset taper relief provisions are likely to be better off under the new rules unless they have substantial indexation allowance.

Other tax related matters to consider prior to liquidation:

- A new 12 month accounting period for corporation tax purposes begins at the date a company resolves to wind up.
- The surrender of trading losses by way of group relief.
- The realisation of capital gains and their offset.
- The tax consequences of moving assets between group companies.

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Other issues

- The Companies Act 2006 introduces changes to company law that will directly affect directors and shareholders. From 1 October 2009 the time limit for making an application to Court for the restoration of a liquidated company to the register after dissolution will be six years. The time limit is currently two years. The six year time limit will also apply to companies struck off and dissolved by application of the directors (presently 20 years). It remains essential, therefore, that thorough due diligence is undertaken to identify and deal with all actual and contingent liabilities and onerous contracts to avoid any future action against the company and its directors.
- When a company is struck off owning property, that property vests in the Crown as 'bona vacantia'. As share capital and non-distributable reserves (including the share premium) cannot be repaid otherwise than by liquidation or the buy back of shares, or Court Order, the equivalent assets will pass to the Crown. The Office of the Treasury Solicitor has confirmed

that where a company has been struck off by application of the directors it will waive the right to recover any unauthorised distribution of less than £4,000.

How we can help

An MVL can be a tax efficient and cost effective way of bringing a company to a formal end. An alternative may be to make an application to Companies House for striking-off. At Mercer & Hole our experienced insolvency and tax teams are able to work closely with you and advise you on the right solution and the right time for implementation. We are happy to have an initial, free of charge, meeting at which we can explore the options best suited to your particular circumstances. This will enable us to provide a service tailored to your specific needs. For further information please contact one of our licensed insolvency practitioners.

The Mercer & Hole Rescue, Recovery and Insolvency team has extensive experience covering the breadth of restructuring and recovery work. Our partners and managers have many years of experience helping companies and individuals facing financial problems.

Initial consultations are free of charge and without commitment.



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