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OUR GUIDE TO A SOLVENT (MEMBERS' VOLUNTARY) LIQUIDATION FOR DIRECTORS & SHAREHOLDERS

What is a Members' Voluntary Liquidation (MVL)?

It is the Liquidation of a company that is "solvent"; ie the company has sufficient assets to settle all liabilities in full, plus statutory interest. All creditors must be paid within 12 months.

The Liquidation has to be carried out by a licensed *insolvency practitioner*, even though it relates to a solvent company.

Usually, a company's assets are sold and the proceeds used to pay creditors and the Liquidator's fees and disbursements before any remaining monies are then distributed to shareholders.

Why use a Members' Voluntary Liquidation (MVL)?

There are a number of reasons why shareholders may want to place a solvent company into Liquidation, including because it has ceased to trade and has no further purpose. However, an MVL is also commonly used to legally minimise the tax that is payable by shareholders receiving the benefit of their company's assets and profits.

What is the alternative?

Directors may opt to strike a company off the Register at Companies House, which is also known as dissolution.

Tax Advice

Sadlers does not give tax advice. However, we do have a very good understanding of the tax implications that are relevant to the solvent companies that we advise. We always recommend that the directors and shareholders take advice from their accountants or tax specialists about specific reliefs that may be available and to ensure that the MVL fits any tax planning that is already being implemented before making any decisions about closing a company using the MVL process.

What are the benefits?

- **Tax efficient**
  Distributions received by shareholders through an MVL are subject to Capital Gains Tax. If directors were to sell all of their company's assets and then distribute the company's funds to shareholders before dissolution then those funds would be taxed as income, unless they total less than £25,000.

  Being subject to Capital Gains Tax means that funds may also be eligible for capital reliefs like Entrepreneurs' Relief, which would reduce the tax payable by shareholders even further.

  Stamp duty land tax is not payable to distributions of property made *in specie* by the Liquidator.

- **Cost effective**
  Before you engage us we will provide you with a fixed fee quote including a comprehensive breakdown of the disbursements we will need to incur, which do differ depending on your company's circumstances.

  Ongoing audit, accountancy and other professional fees will obviously stop. Management time of the directors will also be saved.

- **Quick**
  Subject to an indemnity from shareholders we don't have to wait for HM Revenue & Customs' clearance and we will aim to distribute funds to you upon receipt of cash from the company's bank.

- **Reduce risk**
  Any ongoing risk to the directors stops, as the Liquidator becomes entirely responsible for the company and its activities.

What does *in specie* mean ?

Assets can be distributed to shareholders, instead of cash. This would commonly be a property that shareholders do not want to see sold. The property is assessed at a fair value and treated as if it were cash.

What are the disadvantages?

An MVL will initially look more expensive and complicated than dissolution, as it must involve an insolvency practitioner who will expect to be paid.

WARNING: Dissolving a company does not generally have the tax benefits of an MVL and may end up costing the shareholders considerably more.

What we expect of the directors

We aim to minimise the costs of the Liquidation to the benefit of the shareholders. However, we do expect the Company to be ready for Liquidation.

1 All assets should have been sold and debts collected leaving the company with only cash and / or directors' or intercompany loans. If an asset is to be distributed *in specie* it should have been recently valued by a qualified surveyor.
2 All charges registered against the company must have been recorded as satisfied at Companies House.
3 All accounts and returns will need to be prepared up to the date of Liquidation for submission to HM Revenue & Customs. This will include the submission of final VAT, PAYE and subcontractor returns, if relevant. You will be obliged to provide copies to us of all of the final accounts, returns and evidence of final payments made.
4 All liabilities of the company should have been settled, including all corporation and other tax liabilities.
5 Distributions to shareholders are to be made in accordance with the company's Articles of Association.

If any of the above do not apply then please discuss your company's exact circumstances with us. It probably won't delay the MVL, but it may cost a little more.

The MVL process

In most cases this can be a relatively simple procedure, where creditors' claims are settled and any surplus cash or assets are distributed to shareholders after costs. There are, however different ways in which distributions can be made and a company's individual circumstances will determine which method of distribution will be the most appropriate and tax efficient for its shareholders.

Engagement

We will always issue an engagement letter setting out the cost of the MVL relating to your company and what we will and won't do. The directors must sign a copy of the letter to confirm that they have received and understood it.

Declaration of Solvency

At least one director will be expected to make the following declaration before a solicitor:

I, [name] of [address], being a director of [company] do solemnly and sincerely declare that I have made a full enquiry into the affairs of this company and that, having done so, I have formed the opinion that this company will be able to pay its debts in full together with interest at the official rate within a period of twelve months, from the commencement of the winding up.
I append a statement of the company's assets and liabilities as at [date], being the latest practicable date before the making of this declaration.
I make this solemn declaration, conscientiously believing it to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

This is a legal requirement for any company before entering into an MVL.

Any director making a Declaration of Solvency without having reasonable grounds for their opinion is liable to imprisonment or a fine, or both.

We will help you prepare the document, including the Statement of Affairs, which must be made up to a date no more than five weeks before the company enters Liquidation.

Board Meeting

The directors must hold a meeting to decide to convene a meeting of the shareholders to begin the Liquidation.

Provision of information

You will be required to provide copies of all accounts and returns that should have been prepared up to the date of liquidation for submission to HM Revenue & Customs, together with details of any outstanding liabilities and assets.

Preparation

We will prepare all of the statutory minutes, notices and resolutions. We will also check your company's memorandum and articles of association to ensure compliance with notice periods and voting rights.

Meeting of shareholders

It is the shareholders who will put the company into Liquidation and appoint a Liquidator.

They will need to pass at least the following resolutions, although they need not physically attend and can vote by proxy:

1. SPECIAL RESOLUTION:
That the Company be wound up voluntarily.

2. ORDINARY RESOLUTION:
That [liquidator], being a person qualified to act as a Licensed Insolvency Practitioner, be appointed Liquidator of the Company.

Following appointment

Once appointed we will file the Declaration of Solvency and resolutions confirming our appointment at Companies House. We will also advertise our appointment in the London Gazette and advertise for creditors to submit claims. Even though we understand that there are likely to be no outstanding debts it is best practice to advertise in case any creditor that the directors are unaware of wishes to make a claim.

Cash at bank

We will request the company's bank to pay the company's cash to a client account controlled by the Liquidator.

Distributions of cash to shareholders

The timing of distributions will depend wholly upon when we receive money from the company's bank. All banks are different in terms of how quickly they will release funds to the Liquidators. If your company is or has been VAT registered, we will reclaim the VAT on the professional costs incurred and make a final distribution towards the end of the Liquidation.

Indemnity

We will require a written indemnity from the shareholders if distributions are to be made prior to us being fully satisfied that all liabilities have been settled and tax clearance has been obtained from HM Revenue & Customs. However, as long as all liabilities have been paid prior to appointment then we will have no cause to rely upon the indemnity.

How long will the process take?

From the return of our engagement letter signed by the directors and receipt of all information and documentation we require, the company can be placed into liquidation within a day or two, with the required consent of the shareholders. If there are a number of shareholders who will require their full notice entitlement then this will obviously take longer. Distributions can be made to shareholders upon receipt of the cash from the company's bank and any necessary indemnity. It should be noted that the company will remain in existence until the Liquidation is complete, although this should only be a matter of weeks and certainly no longer than 12 months. Delays may occur when relying on parties over which the Liquidator has no control, such as obtaining tax clearance and reclaiming the VAT on costs from HM Revenue & Customs.

How do I dissolve my company?

A company may be struck off the Register at Companies House if it is not carrying on a business or operation and may be struck off voluntarily by the directors.

The company must be solvent and should not have any assets unless the directors are prepared to lose them to the Crown.

A distribution of up to £25,000 to shareholders, on or before dissolution, is treated by HM Revenue & Customs as capital for tax purposes and is, therefore, subject to Capital Gains Tax and not income tax. This used to be known as Extra-Statutory Concession C16, but is now law.

If a company's share capital exceeds the £25,000 limit, then the directors could consider implementing a capital reduction procedure, however, this will require specialist tax advice.

Remaining dormant

A company may be left dormant, with or without assets, however, accounts and confirmation statements will still need to be filed annually at Companies House.

The Registrar may apply to strike off a dormant company.

HM Revenue & Customs are required to be notified of a company being dormant otherwise corporation tax returns will still be required annually. Cessation of trading may affect the shareholders' entitlement to claim Entrepeneurs' Relief.

Why should I pay for an MVL when I can strike the company off?

There are significant potential disadvantages to striking off:

- Shareholders may miss the opportunity to take advantage of Entrepreneurs Relief and thereby legitimately make significant tax savings. In many cases these savings can far outweigh the cost of an MVL
- The liability of every director, managing officer and member of the company continues following dissolution and may be enforced.
- The company may be restored to the Register at Companies House after it has been struck off. This is most likely when a company has failed to pay a creditor, which the directors had not considered or were not aware of at the time of the dissolution.
- All assets and property of the company prior to dissolution become *bona vacantia*, meaning vacant goods, which by law passes to the Crown. The Treasury Solicitor acts for the Crown to collect the assets of dissolved companies in England and Wales.

Targeted Anti-Avoidance Rule

The Finance Bill 2016 introduced a new Targeted Anti-Avoidance Rule that came into effect on 6 April 2016.

HM Revenue & Customs will treat a distribution as being subject to income tax and not Capital Gains Tax where **all** of the following conditions are met:

- Condition A: the individual receiving the distribution had at least a 5% interest in the company immediately before the winding up.
- Condition B: the company was a *close* company (ie five or fewer shareholders, or any number where all are also directors) at any point in the two years ending with the start of the winding up.
- Condition C: the individual receiving the distribution continues to carry on, or be involved with, the same or similar trade or activity as that of the distributing company at any time within two years of the distribution.
- Condition D: it is reasonable to assume that the main purpose, or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax.

Whilst clearly aimed at preventing gaining a tax advantage by "phoenixing", care should be taken that shareholders do not fall foul of Condition C where other business interests are held or intend to be pursued. Please contact us for clarification if you think this may apply to you.

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Capital Gain Tax (CGT)

How much you pay will depend on the asset you've made a profit on and your tax band.

Tax bracket	CGT rate on assets	CGT rate on property
Basic rate payer	10%	18%
Higher or additional-rate payer	20%	28%

The table below details your CGT allowance for the tax years 2017-18, 2018-19 and 2019-20.

Tax year	2018-19	2019-20	2020-21
CGT allowance for an individual	£11,700	£12,000	£12,300
Couple's allowance (married or in a civil partnership only)	£23,400	£24,000	£24,600

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Entrepreneurs' Relief

You may be able to pay less Capital Gains Tax when the company in which you hold shares enters into an MVL.

Entrepreneurs' Relief means you'll pay tax at 10% on all gains on qualifying assets, up to a lifetime limit of £1 million (previously £10 million before 11 March 2020).

Currently, to qualify for relief, you must have owned shares in the company for at least two years before the date of the Liquidation.

There are also other rules depending on whether or not the shares are from an Enterprise Management Incentive (EMI).

If the shares are from an EMI

You must have both:
- bought the shares after 5 April 2013
- been given the option to buy them at least two years before selling them

If the shares are not from an EMI

For at least two years before you sell your shares, the business must be a 'personal trading company'. This means that you have at least 5% of the:
- shares; and
- voting rights; and either 5% of the:
    - entitlement to profits that are available for distribution
    - entitlement to assets on winding up the company ie the MVL; or
    - 5% of the disposal proceeds on a sale.

You must also be a director, the company secretary or an employee of the company.

If the business stopped being a trading company some time ago

If the company has already stopped being a trading company, you should still qualify for relief if you start the MVL within three years.

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Extra-Statutory Concession C16

The Enactment of Extra-Statutory Concessions Order 2012 made ESC C16 obsolete, however, the principle still applies.

Distributions prior to dissolution of up to £25,000 will be treated by HM Revenue & Customs as being subject to Capital Gains Tax and not income tax, although care should be taken to consider the timing of prior distributions.

The Corporation Tax Act 2010 has now been amended to read:

"Distributions prior to dissolution of company
1030A Distributions in respect of share capital prior to dissolution of company

(1) This section applies where—

(a) the procedure in section 1000 of the Companies Act 2006(2) (power to strike off company not carrying on business or in operation) has been commenced in relation to a company, and
(b) the company makes a distribution in respect of share capital in anticipation of its dissolution under that section.

(2) This section also applies where—

(a) a company intends to make, or has made, an application under section 1003 of that Act (striking off on application by company), and
(b) the company makes a distribution in respect of share capital in anticipation of its dissolution under that section.

(3) The distribution is not a distribution of a company for the purposes of the Corporation Tax Acts if conditions A and B are met (but see section 1030B).

(4) Condition A is that, at the time of the distribution, the company—

(a) intends to secure, or has secured, the payment of any sums due to the company, and
(b) intends to satisfy, or has satisfied, any debts or liabilities of the company.

(5) Condition B is that—

(a) the amount of the distribution, or
(b) in a case where the company makes more than one distribution falling within subsection (1)(b) or (2)(b), the total amount of the distributions,

does not exceed £25,000.

(6) In the case of a company incorporated in a territory outside the United Kingdom, any reference in subsection (1) or (2) to a section of the Companies Act 2006 is to be read as a reference to any provision of the law of that territory corresponding to that section.

1030B Section 1030A: effect of company not being dissolved, etc

(1) Where this section applies, a distribution made by a company is to be treated for the purposes of the Corporation Tax Acts as if section 1030A(3) had never applied to it.

(2) This section applies where 2 years have passed since the making of the distribution and—

(a) the company has not been dissolved during that time, or
(b) the company has failed—
(i) to secure, so far as is reasonably practicable, the payment of all sums due to the company, or
(ii) to satisfy all of its debts and liabilities.

(3) In a case where this section applies, all such adjustments as are required in order to give effect to subsection (1) are to be made, whether by the making of assessments or otherwise."