FA SIMMS
FA Simms & Partners Limited

Members' Voluntary Liquidation ("MVL")
Key Facts

Providing **Solutions**

What is a Members' Voluntary Liquidation?

A Members' Voluntary Liquidation is the formal process to close a solvent company. A solvent company means that the company has sufficient assets to pay off all the creditors in full within a maximum 12 month period. An MVL is usually used where there are surplus assets in the company, typically over £25,000 of net positive assets.

Key Fact: The solvency of the company is proved by a sworn statement. It is this statement that distinguishes a solvent liquidation from an insolvent liquidation. This is known as the Statutory Declaration of Solvency.

Key Fact: If the declaration subsequently turns out to be false then the company will move into insolvent liquidation. The directors may also be subject to legal and financial penalties at this point!

Statutory Declaration of Solvency

The statutory declaration is sworn by a majority or all of the company directors. The declaration shows the financial position of the company. The position must show that the company can settle all of its liabilities, including any statutory interest due, within a maximum 12 month period.

Key Fact: The declaration must be made up and sworn within 5 weeks before the passing of the resolution by the shareholders to place the company into MVL.

Why use a Members' Voluntary Liquidation?

An MVL remains optional on the closure of a solvent company. The alternative is to apply to Companies House to have the company struck off. This is also known as having the company dissolved.

So why use an MVL? The principal MVL benefit is the replacement of the ESC-C16 (extra-statutory concession C16) with the Extra-Statutory Concessions Order 2012.

Key Fact: The new legislation was effective from 1st March 2012.

Extra-Statutory Concessions Order 2012

This order made the previously informal HMRC extra-statutory concessions into statute.

The relevant HMRC ESC was C16, which allowed capital tax treatment on distributions from solvent companies immediately prior to them being dissolved.

The turning of ESC-C16 into statute made capital tax treatment received on the closure of a solvent company limited to a maximum of £25,000.

Any distribution above £25,000 would not be eligible for capital tax treatment without the company going through an MVL.

Key Fact: Since the Order the number of MVL's undertaken has increased substantially.

What are the benefits of an MVL?

The tax benefits come under the Enactment of Extra-Statutory Concessions Order 2012. This allows for solvent companies who have distributable funds exceeding £25,000 to make distributions to their shareholders and still receive capital tax treatment rather than income tax treatment that would apply without using an MVL.

A further tax benefit is the availability of Entrepreneurs' Relief which could further reduce the rate of tax payable on a distribution through an MVL.

Key Fact: It is crucial that tax advice is taken before an MVL is undertaken.

What is Entrepreneurs' Relief?

Entrepreneurs' Relief is a personal tax relief which can be claimed on capital gains on qualifying shares.

Key Fact: Tax rates can be reduced to as low as an effective rate of 10%.

Members' Voluntary Liquidation ("MVL") - Key Facts

Who benefits from an MVL?

Shareholders benefit from an MVL if their tax position is improved by the application of capital tax treatment on the distributions from the company. Total distributions need to be over £25,000 to benefit from an MVL.

Key Fact: If the company is not able to pay off all its outstanding creditors within one year then the company is not eligible to enter into an MVL.

Costs of an MVL

Costs for an MVL are fairly structured in nature. There are costs for us, as Insolvency Practitioners, to act as Liquidators. These will typically be from £2,500 plus VAT.

Disbursements are recharged directly to the case and will include statutory advertising, insurance bonds and postage.

If a S.110 agreement is needed as part of the MVL, there is often the requirement for the drafting of an agreement by a solicitor, which may incur additional costs.

Key Fact: If properties are being moved between owners, stamp duty land tax may apply. Please check with your tax adviser.

What is the MVL process?

The MVL process has three key elements to it. The Directors' Meeting, the Shareholders' Meeting and the Final Meeting. During these meetings key items need to be addressed and forms need to be signed to continue with the liquidation process.

The Directors' Meeting

Within this meeting Directors decide to call a meeting of Shareholders to place the company into an MVL. It also enables the Directors to draw up a declaration of solvency and to appoint an Insolvency Practitioner to assist with the MVL process.

The Shareholders' Meeting

This meeting is for the Shareholders to consider and pass necessary resolutions. These include entering into the liquidation and appointing the Liquidator.

The Final Meeting

Once all the assets have been distributed and creditors paid, the Liquidator must hold a Final Meeting. A summary report is considered by Shareholders and the report is then sent to Companies House where the Company will then be struck off of the register three months after this.

Key Fact: With the Shareholder approval, the normal 14 or 21 days' notice (depending on the company's Articles) to call a Shareholders' Meeting to resolve to place the company into MVL can be reduced to effectively no notice. This is called short notice.

What is S.110 IA'86?

A S.110 agreement is often referred to within an MVL. S.110 allows shares in companies to be distributed to shareholders of the company in the MVL rather than just individual assets or cash. The S.110 will often lead to the formation of one or more new subsidiary companies, the shares of which will be distributed to the Shareholders of the company in the MVL.

Key Fact: S.110 agreements can be quite complicated depending on the nature of the asset restructuring that is taking place.