

Bretts Business Recovery – Members Voluntary Liquidation (MVL)

A Members Voluntary Liquidation (MVL) is the winding up of a solvent company.

A Members' Voluntary Liquidation is a shareholder-led process and can be a tax efficient way to close a solvent company.

It is usually used by shareholders wishing to close their company and withdraw their capital.

All creditors of the company are paid in full and any remaining funds are distributed to shareholders.

Reasons why the shareholders may wish to shut down a solvent company include:

- 1) The company has ceased trading and the shareholders want to “unlock” the value of the business.
- 2) The retirement of directors/shareholders.
- 3) When directors/shareholders are in dispute and want to go their separate ways.
- 4) As part of a company restructure (under S.110 of the Insolvency Act)

Groups of companies may also include dormant subsidiaries which are no longer required.

To prove a company is solvent, a majority of directors must swear a *Declaration of Solvency*, incorporating a *Statement of Affairs*.

- This confirms that they have made a full enquiry into the company's financial affairs and have decided that the company can pay all its debts in full plus interest within a 12-month period.
- The Declaration of Solvency includes a simple form of balance sheet for the company, as of the date it is placed into liquidation.
- **At Bretts we help you prepare the Declaration of Solvency.**

Since 1 March 2012 HM Revenue & Customs Extra Statutory Concession C16 (ESC C16) introduced a cap of £25,000 on the amount payable on the dissolution of a Company, which can be treated as a distribution of capital rather than income.

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The main advantage of an MVL is that all distributions made to the shareholders in the liquidation are classed as distributions of capital, rather than income.

- Capital distributions are subject to capital gains tax, rather than income tax, which is charged at a lower rate.
- The tax payable by the shareholder may be further reduced by applying the various capital reliefs that are available, including entrepreneur's relief. Specialist tax advice should be sought from your accountant or tax advisor and all options explored when considering closing your solvent business.

In an MVL, the shareholders control the appointment of the Liquidator, not the creditors who will be paid in full.

- A meeting of the shareholders is held, where the company is placed into Liquidation and a Liquidator appointed.
- If, during the administration of the liquidation, the Liquidator decides there are insufficient assets to settle creditor's claims in full, then the MVL can be converted to a Creditor's Voluntary Liquidation ("CVL") i.e. an insolvent liquidation.
- Before concluding the liquidation, the Liquidator shall need to obtain the appropriate tax clearances from HM Revenue & Customs.

Changes to Members Voluntary Liquidation & entrepreneur's relief

What is Entrepreneur's relief?

Entrepreneur's relief allows shareholders to pay a lower rate of capital gains tax on any distributions received through a members' voluntary liquidation of a solvent company

If a business owner winds up a solvent business using a member's voluntary liquidation (MVL), shareholders may be entitled to pay, for example, 10% Capital Gains Tax via entrepreneur's relief on the distribution that they receive. This is much more favourable than the standard rate of capital gains tax.

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2018 Budget Changes to Entrepreneur's relief conditions

There are several conditions that must be met in order to qualify for entrepreneur's relief

- 5% of the issued ordinary share capital of the company (measured at its nominal value); and
- 5% of its voting rights.
- These requirements, as well as certain other conditions, must be met during the relevant 'holding period'.

However, where there are shares acquired from an Enterprise Management Incentive (EMI) the '5% requirements' do not apply. Also, the 'holding period' for EMI shares – during which certain other conditions must be met – begins on the date on which the relevant options are granted, rather than on the date on which they are completed.

The Autumn Budget has made some changes to these conditions. From 29 October 2018, in addition to the '5% requirements' set out above, shareholdings acquired outside an EMI plan must also cover an entitlement to at least:

- 5% of the profits available for distribution to equity holders; and
- 5% of the assets available to equity holders on a winding-up.

As these changes do not apply to shares acquired on the exercise of EMI options, it remains possible for such shares to attract ER regardless of their voting or economic rights.

Additionally, from 6 April 2019, the 'holding period' during which the relevant Entrepreneur's Relief conditions must be met will increase from one to two years.

Want to know more?

If you or your client is considering closing a company or has questions about the solvent liquidation process please contact Bretts Business Recovery. We can provide guidance on the process and if engaged with ensure the process is carried out smoothly. Our insolvency practitioners are licensed by the Institute of Chartered Accountants and adhere to the highest standards.

The MVL team at Brett's is director lead and we usually are able to make an early distribution within 24 hours of being appointed (with the appropriate indemnities) and will keep the shareholders appraised of progress with regular updates.

The next step is to call us for a free, no-obligation discussion to see how we can help you...

For More Information, Please Contact BBR Today

Bretts Business Recovery

Main Office, 21 Highfield Road, Dartford, Kent DA1 2JS • Essex Office, Whitegates, Alexander Lane, Shenfield, Essex CM15 8QF
Telephone: 0808 168 7540 • enquiries@brettsbr.co.uk • www.brettsbr.co.uk