

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 tax efficient way to close down a solvent company.

It's 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.

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 says they've made a full enquiry into the company's financial affairs, and decided 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.

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- **At Bretts we can 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.

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 can therefore be further reduced even further by applying the various capital reliefs available, including entrepreneurs relief.

In a 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 obtains the appropriate tax clearances from HM Revenue & Customs.

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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 profitable company

If a business owner liquidates a profitable business using 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 20%.

2018 Budget Changes to Entrepreneur's relief conditions

There are a number of conditions that have to 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:

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- 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.

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

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