

# Insolvency Update

News and comment for professional advisers

## Company voluntary arrangements

With HMRC becoming less cooperative when it comes to negotiating time to pay arrangements, directors of businesses with financial difficulties need to look elsewhere if they want to rescue their company, or find a breathing space to review, recover and retrieve. One such option is the Company Voluntary Arrangement (CVA).

Until recently, CVAs have been perceived as expensive, sluggish and only suitable for larger companies. Today they are more generally accepted by creditors who fully understand the pressures on today's companies and will often share directors' wishes to avoid administration and, hopefully, see a better recovery.

CVAs make sense. Primarily, they are flexible, there are no restrictions on what can be included, making them successful in many situations. When a company is in financial difficulty, a CVA can therefore help to secure survival, especially when professional advice

is sought at an early stage.

In summary, a CVA facilitates a continuation of trade and mitigates creditors' losses. It gives directors time to work with creditors to reorganise and restructure the business, turn it round, and generate surplus cash. The directors remain in control. They are not subject to disqualification rules and their personal guarantees may not be called upon. Because the company continues to trade, employees' jobs are saved.

A CVA is not a panacea, however. Secured creditors do not have to play ball and can call on their security. While a CVA may have an impact on credit ratings and make it harder for the business to obtain credit. Directors' remuneration may be restricted and HMRC will certainly impose strict terms on future tax liabilities. The business will also have to generate sufficient cash to pay preferential creditors in full and a dividend to unsecured creditors.

## Time to pay arrangements

In the second quarter of 2011 HMRC agreed 15,490 Time to Pay arrangements. A year previously it agreed 30,160. This is a reduction of 49%. Analysis shows that the number of refusals rose by 40% between 2010 and 2011, while the continuing rejection rate in June 2011 was running at 20 percent.

These figures confirm the prevailing view that HMRC is adopting a harder stance. This shift should definitely be 'on the radar' of directors and stakeholders. The formal HMRC position is that there are no plans to close the Business Support Unit or change Time to Pay policies.

Despite this harder approach, HMRC will still agree Time to Pay proposals. Directors must show that the business is viable, and present well-developed plans which give a good case for HMRC consent. The combination of this harder attitude, coupled with the current shortage of business finance, means that directors may now need to add CVAs to their mix of options.



## About Insolvency Update

At the Hazlewoods Insolvency practice we believe in regularly briefing the professional community on matters relevant to directors, businesses and other stakeholders faced with insolvency or liquidation. We welcome suggestions for articles in future editions of this newsletter. Please contact Kate Parsons-Mason.

The Hazlewoods Insolvency practice works with direct clients and their advisers to support businesses and individuals at times of insolvency. Initial meetings, which can be held at any location, are free.

# HAZLEWOODS

# Members Voluntary Liquidations

## Maximising Tax Advantages

Members Voluntary Liquidations (MVLs) are an important tool to be considered when planning for the closure of a company, the sale of all, or part, of the business or succession planning. The correct tax planning can save your clients many thousands of pounds.

The majority of MVLs are undertaken for the following reasons:

- Closure of the company. The usual scenario is that the directors/members wish to retire. Planning of the payment of the majority of the creditors needs to be considered.

When the members then start to receive their funds, dividends or capital return, must be considered.

It should be remembered that the appointment of a liquidator brings an accounting period to an end for corporation tax purposes. Therefore, timing needs to be

considered as a shorter accounting period will restrict the small companies' band.

Any intra group loans also need to be considered before the appointment of a liquidator. The group is severed on appointment of liquidator, which may render any write off of intra group debt a taxable event post appointment.

For Entrepreneurs' Relief to apply, the distribution needs to take place within three years of the cessation of trade.

- Restructure (S.110 Insolvency Act 1986). There may be a desire to put different parts of the business or assets into new companies allowing members to have control of different aspects. The common, and sometimes most tax efficient way, is a reconstruction under S.110.

A major requirement to allow this to take place is to obtain appropriate clearances from

HMRC to the proposals prior to putting together the legal documentation.

Care needs to be taken on any such reorganisation to ensure you do not unknowingly fall into any of the tax traps. Often Capital Gains Tax, Stamp Duty or Stamp Duty Land Tax are forgotten, and liabilities may arise, particularly if there is a splitting of various parts of the business amongst different shareholders.

Often, the clearances provided will not extend to a future sale or liquidation of one of the newly formed companies, so shareholders should not expect that they can sell the shares straight after reorganisation to get cash out, unless further clearance is obtained.

Finally, many companies, rather than going through formal liquidation have, in the past, taken advantage of Extra Statutory Concession allowing the company to be struck off. In the past where the return to members was less than £4,000 HMRC did not pursue any tax payable on the funds. However, the Treasury Solicitor has seen fit to withdraw this concession.

The conclusion is that it is important to ensure that funds are distributed before a company is struck off. This may be a mere formality but in some cases may require a formal liquidation.

## Insolvency Team Expansion

Hazlewoods Insolvency and Business Recovery have seen an exciting expansion recently with two new offices opening in the South West and a new Director joining the Gloucester team.

Hazlewoods will become the only Insolvency Practitioners in the UK to have a staffed office in North Devon providing support for businesses in the region.

Kate Parsons-Mason, who has been appointed to manage the new Barnstaple office, has used her knowledge and expertise to advise many businesses across Devon and Cornwall providing crucial profit improvement reviews, planning and strategy advice along with one-to-one support.

The department has been further expanded



The team: Peter Frost, Ross Parry, Kate Parsons-Mason, Vic Ellaby and Philip Gorman

with the acquisition of the business of Bristol based Insolvency practice Rogers Evans (formerly J W Lewis). Vic Ellaby, Chartered Accountant and Licensed Insolvency Practitioner, has been appointed to manage the new Bristol office. Vic has been involved in

all types of corporate and personal insolvency.

Finally, the recent recruitment of Ross Parry from PWC, a well respected Insolvency specialist has further expanded the team at our Gloucester office.

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