

Insolvency Newsletter

Vince & Associates

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Members' Voluntary Liquidation or Deregistration?

People often associate the word "liquidation" with insolvency or the collapse of a company. Whilst this may generally be the case, Members' Voluntary Liquidations relate to the winding up of a solvent entity and may provide for a significant tax advantage to the members.

Deregistration of companies

Deregistration of companies is more appropriate for smaller companies which conducted minimal trading or where dormant since existence, and which held minimal assets.

The restrictions relating to the voluntary deregistration of a company in accordance with the Corporations Act are as follows:

- All members of the company must agree to the deregistration;
- The company must not be carrying on a business;
- The company's assets must be less than \$1,000;
- The company must have paid all fees and penalties;
- The company must not have any outstanding liabilities; and
- The company must not be a party to any legal proceedings.

Members' Voluntary Liquidation

The wind up of a solvent company is completed by a registered Liquidator who specialises in these matters.

Members' Voluntary Liquidations may provide a more tax advantageous method for the members of a company to receive distributions, particularly in the case of pre-capital gains assets.

A Liquidator may make two types of distributions to members:

1. Income distributions; or
2. Capital distributions.

1. Income Distributions

These are distributions to the members from the profits generated by the company. These payments will be classed as dividends and will generally be assessable income in the hands of the members.



2. Capital Distributions

Capital items generally include capital reserves or gains as a result of the sale of capital assets. A capital distribution will also include the return of the initial paid-up capital to the members.

The tax implications of the capital distributions will be dependent on the composition and nature of the capital asset being distributed. For example, where the capital distributions relate to pre-capital gains tax profits generated by the company, generally any distributions made to members in this regard would be free from capital gains tax in the hands of the taxpayer.

Forms of Distributions

The Liquidator may also declare an in-specie distribution of the underlying assets of the company to the members in proportion to the member's interest. An in-specie distribution allows the Liquidator to distribute assets to the members without converting it into cash and incurring potentially significant costs associated with the sale of assets.



Christmas Members' Voluntary Liquidation Example

North Pole Pty Ltd was incorporated in 1980 with \$2 in share capital. Mr Claus and Ms Claus were allotted one share each which they continue to hold. Mr Claus and Ms Claus lent \$500,000 to North Pole Pty Ltd to purchase a property in 1981. This property was sold recently for \$1,000,000 realising a tax-free capital gain of \$500,000. North Pole Pty Ltd has approximately \$500,000 in the bank after repaying their loan account.

Mr Claus and Ms Claus wish to wind-up the company and reduce the tax payable on the \$500,000.



Option 1- Deregistration

North Pole Pty Ltd would need to distribute the cash to Mr Claus and Ms Claus prior to deregistration which will be assessable as an unfranked dividend. A dividend of \$500,000 will be liable for tax of up to \$245,000 based on the top marginal tax rate of 49% (45% + 2% Medicare + 2% budget repair levies).

Option 2 – Members' Voluntary Liquidation

The capital gain may be distributed tax-free to Mr Claus and Ms Claus.

Vince & Associates can conduct Members' Voluntary Liquidations for you or your clients on solvent entities. Information in this newsletter is of a general nature and we strongly recommend that you or your clients obtain professional advice from a tax professional to consider whether Members' Voluntary Liquidations are the most appropriate option in your situation.

Disclaimer: This newsletter represents the opinions of the authors. The contents are for general information only. It is not intended as professional advice. Please see us for your individual circumstance.

Vince & Associates specialise in the following areas:

Corporate Insolvency:

- Creditors' Voluntary Liquidation
- Members' Voluntary Liquidation
- Voluntary Administration
- Official Liquidation

Personal Insolvency:

- Bankruptcy
- Personal Insolvency Agreements

Consulting Matters:

- Investigative Accountant's Reporting
- Business Valuations
- Forensic Accounting & Litigation Support

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