

HMRC clarifies tax issues of DLAs in MVLs

HMRC has published updated guidance on the tax implications of directors' loan accounts (DLAs) and distributions in MVLs. This can be found at: <https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm61559>. This confirms that overdrawn DLAs can be distributed to shareholders in an MVL and they qualify as capital distributions.

CVAs and Landlords – CVAs win on most points

Retail CVAs have been common recently and CVAs have sought with general creditor support to cram down landlords in respect of rent under property leases to restructure the businesses and to allow them to survive.

Challenges by the landlords against the Debenhams companies in CVA

In Discovery (Northampton) Ltd and others v Debenhams Retail Ltd and others [2019] EWHC 2441 (Ch), the landlords challenged the CVA proposal on the following grounds: - the landlords did not have a claim for rent to be paid in the future at the time the CVA was effective and therefore they could not be bound; - the CVA provisions reducing rent payable under relevant leases was unfairly prejudicial as it changed the terms of the leases; - the CVA did not have the jurisdiction to restrict the landlords' proprietary rights of forfeiture; - the CVA unfairly prejudiced the landlords as it treated them less favourably than other unsecured creditors without proper justification; - there had been a material irregularity in the CVA process because there were potential antecedent claims under s239 and 245 if the company went into administration which had not been disclosed in the CVA.

The Court's response to the challenges

The conclusion reached by the court on these issues were: - future rent is a pecuniary liability to which the company may become subject by reason of the covenant to pay rent and therefore future rent may be included in the CVA; - since the rents payable historically on the leases were not for current market rate and the proposed rent in the CVA was for current market rate and not less, and the CVA provided for the landlords to determine the lease, the court held there was no unfair prejudice; - the court held in favour of the landlords on the right of forfeiture and this was removed from the CVA proposal; - the court held that unfair prejudice came down to market rates and whereas suppliers were subject to more competitive pressures, the landlords were being paid above market rate and the reduction would only be an issue if it proposed the payments be reduced to less than market rate; - the non-disclosure of the antecedent transactions were not upheld however references to various challengeable monetary transactions were actually covered in the CVA and the nominal amount that could possibly have been recovered would not have substantially affected the voting.

These are important decisions by the Court which reinforce the effectiveness of CVAs in retail scenarios and the procedures generally.

Pension Scheme Guidance by R3 (the insolvency profession trade body)

The issue of pensions has become a more prominent area for IPs and the accounting profession generally now that auto-enrolment staging dates have all passed and mostly every business and company should have a pension scheme in place. R3 has provided guidance and a checklist to help IPs around the complex issues which may be found at: https://www.r3.org.uk/media/documents/technical_library/Technical-Alerts/2019.10.14_Pension_Guidance_FINAL. This document is an excellent summary of the range and type of pension schemes and the auto-enrolment process.

The aftermath of the collapse of Thomas Cook-a number of reactions

FRC Proposals

The Financial Reporting Council (FRC) has commenced an investigation into the audit by EY of the financial statements of Thomas Cook Group Plc (Thomas Cook) for the year ended 30 September 2018.

BEIS Proposals

The Business, Energy and Industrial Strategy (BEIS) Committee has proposed a series of recommendations on corporate governance, executive pay and bonuses, and audit reform in the light of the collapse of Thomas Cook and voiced its concern that previous recommendations had not been implemented. Further information may be found at: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/news-parliament-2017/thomas-cook-chairs-comments-19-20/>. The Chair of the Committee commented that a series of misjudgements at Thomas Cook led to its collapse. The piling up of debt, confused business plans, lack of challenge in the board room and by auditors, and aggressive accounting practices all contributed to the failure of the business.

Exceptional Compensation Scheme

The government has announced that it intends to set up an exceptional compensation scheme for holidaymakers who have outstanding loss of life or serious personal injury claims against UK companies in the Thomas Cook Group. For more information please see: <https://www.gov.uk/government/news/government-plans-to-set-up-exceptional-thomas-cook-compensation-scheme>. The scheme will assist those only in the most serious need, so routine claims covering short-term problems will not be covered.

Increase in insolvencies

The government's quarterly figures for Q3 for both personal and corporate insolvency show an increase. Please see below.

Insolvency Service Statistics	Q3 2019	Change on Q2 2019	Change on Q3 2018
Case numbers E&W			
Corporate			
Compulsory Liquidations	666	-16.4%	-11.4%
Creditors' Voluntary Liquidatio	3,115	2.3%	0.2%
Administrations	484	20.1%	26.7%
Company Voluntary Arrangem	89	-0.3%	-0.5%
Receiverships	1	N/A	N/A
Personal			
Bankruptcies	4,122	-2.6%	-1.2%
Debt Relief Orders	6,784	0.3%	-3.0%
IVAs	19,973	1.4%	42.7%

Website: www.richardjsmith.com

Contact Details

53 Fore Street, Ivybridge, Devon PL21 9AE
Tel: 01752 690101 Fax:01752 690808

Norfolk House, 16 Lemon Street, Truro TR1 2LY
Tel: 01872 261132 Fax: 01872 261134

24 Southernhay East, Exeter, EX1 1QL
Tel: 01392 424063

Partners

Giles Frampton giles.frampton@richardjsmith.com
Hamish Adam hamish.adam@richardjsmith.com
Sam Bailey sam.bailey@richardjsmith.com

Managers

Ken Cole ken.cole@richardjsmith.com
Jonathan Trembath jonathan.trembath@richardjsmith.com

Assistant Manager

Becky Cox becky.cox@richardjsmith.com

Administrators

Karen Quant karen.quant@richardjsmith.com
Shaun Rowe shaun.rowe@richardjsmith.com

Cashier

Mandy Swainson mandy.swainson@richardjsmith.com