

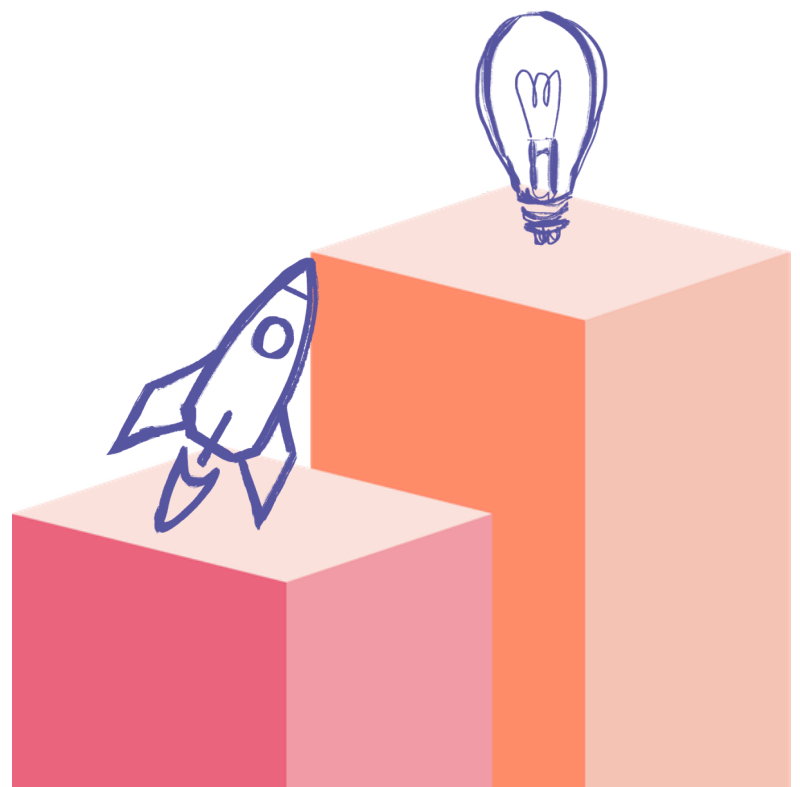
Members' Voluntary Liquidation (MVL)

All you need to know



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Welcome

At Henderson Loggie, our Business Recovery & Insolvency team is committed to providing clear, practical, and professional advice to help you navigate the complexities of Members' Voluntary Liquidation (MVL).

Whether you are planning to retire, restructure, or realise the value of your company's assets, this guide is designed to offer you a comprehensive understanding of the MVL process and how it can support your business goals.

With our expertise and client-focused approach, we aim to make the journey as straightforward and stress-free as possible, ensuring you achieve the best outcome for your unique circumstances.

Top 5 FAQs

1

When do I get my money?

If we have cleared funds on the day of liquidation, we can look to pay an interim distribution to shareholder within a week, should this be beneficial to their tax position.

2

How long will the Liquidation take?

Creditors must be paid within the first twelve months and, subject to realisation of assets and verification that all tax matters have been finalised, we can close off the liquidation within the year.

3

When do my responsibilities as a director cease?

Other than assisting the Liquidator, your duties are likely to cease on liquidation.

4

Can I retain company assets?

Yes, it is possible for assets to be distributed in specie, but there will be tax implications.

5

Can a company be placed in liquidation when there are assets still to be realised?

Yes, in which case the Liquidator would realise the assets. The additional work would be reflected in the fee quoted.

How quickly can we do a Members' Voluntary Liquidation (MVL)?

From initial instruction, assuming the company has ceased trading and the accounts and tax returns are up to date, to cessation of trade we can get the appointment paperwork prepared and be appointed in a matter of days.

The Company must have its final accounts prepared and final PAYE, VAT, and CT returns must be lodged. Ideally, to avoid paying interest that accrues on debts from the date of liquidation, all HMRC liability, indeed all creditors, should be paid prior to the appointment. If the company has finalised everything that matters, then meetings can be called as soon as practicable.

If the company is still trading, it's more cost-effective to tidy up as many of the trading matters as possible prior to moving to appoint. We often provide advice in relation to the practical steps to be taken care of, such as dealing with debtors or employees.

Will the appointment of liquidator avoid the necessity of the company moving into the imminent new accounting year with the accounting implications?

Once a liquidator is appointed no more Companies House filings need to be made by the directors (although the Liquidator must submit various returns and forms). There is no need to prepare and submit statutory accounts for the final periods. However, accounts must still be prepared to support the preparation and submission of the tax returns.

When will I get my money and how much will I get?

We usually distribute the bulk of assets immediately following appointment however, we retain a portion, typically 10% - 20%, until the liquidator verifies HMRC have no outstanding matters to be dealt with.' until HMRC confirm they have no outstanding returns to be lodged or debt due.

If the company assets include cash at the bank, then as soon as the bank transfers the funds to our client account, they can be distributed. To avoid delays in the transfer of cash, business owners can liaise with their bank, prior to liquidation, to ensure a quick transfer.

If the company has fixed assets, they can be distributed in species to the shareholders immediately.

If the fixed assets are to be sold, then the date of realisation is dependent on the market and time it takes to achieve the sale. If we have to sell assets, there are also cost implications because our fee will reflect the additional work. Most companies prefer to realise all the assets they wish to be liquidated prior to the liquidator being appointed.

Will I be able to benefit from current capital gains tax/Business Asset Disposal Relief rules before they change?

Distributions by the liquidator to the shareholders from an MVL are treated as capital in an individual's personal tax return. The relevant date for shareholders' personal tax is the date of distribution. We usually get a flurry of appointments in the lead up to the end of the tax year as shareholders want to benefit from using the current year personal capital gains tax (CGT) allowance (currently £3,000 [£1,500 for a Trust]).

We don't provide personal tax advice and shareholders should seek personal tax advice prior to any decisions on distribution dates and amounts.

We don't have a crystal ball so it's difficult to predict future changes in tax legislation. It's uncommon for personal tax changes to become into effect midway through a tax year, but we usually experience an increase in appointments prior to budgets as shareholders seek to avoid a later distribution that may be subject to changes in CGT and Business Asset Disposal Relief (BADR).

How long does an MVL take?

As you will see there are a lot of variables, but a typical MVL will take between 6 and 12 months from beginning to end, depending on if there are assets to realise and how quickly it can be verified that all HMRC matters are finalised.



Business Asset Disposal Relief (formerly known as Entrepreneurs Relief)

Business Asset Disposal Relief [BADR], formerly known as Entrepreneurs' Relief, is a tax relief available in the UK that offers a reduced rate of Capital Gains Tax (CGT) when selling or disposing of qualifying business and business assets. The relief was introduced, back in 2008, to encourage entrepreneurship and investment in business.

Instead of the standard 24% rate (as of Oct 24), qualifying disposals are taxed at 10%. This rate is set to rise from 6 April 2025 to 14% with a further increase on 6 April 2026 to 18%.

BADR is a valuable tax break for individuals who sell qualifying business assets, reducing the Capital Gains Tax liability and making it easier for entrepreneurs to exit their businesses with a more favourable tax outcome. However, it is important to ensure that the specific conditions are met to qualify.

- It must be a company in which the individual owns at least 5% of the share capital and voting rights, or the sale of business assets such as land, buildings, or goodwill used in a business.
- The asset must have been owned for at least two years before the sale or disposal.
- The business must be a trading business (not an investment business or property rental business).
- The individual must be an employee or officeholder of the business (such as a director) for at least two years before the disposal.
- The relief is subject to a lifetime limit of £1 million (was £10m prior to April 2020). Any gains above this £1 million threshold will be taxed at the standard CGT rates.



Section 455 and overdrawn Director's Loan Accounts

Section 455 (S455) tax is payable by a company if a Director's Loan Account is overdrawn at the end of the company accounting year and hasn't been cleared nine months later. It is essentially to ensure that cash drawn by directors from a company is taxed. The company must pay 32.5% tax on the amount remaining overdrawn 9 months after the end of the accounting year. It is aligned with the higher dividend tax of 32.5%.

S455 tax can be reclaimed once the director's loan has been repaid, although the tax repayment will only be made by HMRC nine months and one day after the end of the accounting period in which the

We often get asked what is the position regarding S455 tax in MVLs.

HMRC has recently resourced its manual with useful guidance on the tax implications of overdrawn directors' loan accounts and distributions in MVLs, which you can view here: <https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm36105>
<https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm61558>.

Note, in an MVL the director's loan can be distributed in specie, therefore it does not have to be repaid in cash. HMRC will take the date of distribution to be the date the loan was repaid.

That is consistent with our experience of seeking to recover S455 tax where the DLA is cleared by distribution in specie. HMRC are happy to take the date of distribution as the repayment date, and grant relief 9 months and 1 day from the submission of the liquidation Corporation Tax return, which aim to get in as quickly as practicable: certainly better for the client than potentially waiting 21 months from the date of liquidation for the S455 tax to come back.

Did you know...

If the company is solvent and has more than £25,000 in non-distributable reserves, then a Members' Voluntary Liquidation may be the answer.

This type of voluntary liquidation can be used in a variety of circumstances but enables the Shareholders to access their capital in the most tax-efficient way possible. Whereas distributions from a company are normally taxed as income, distributions from a Members' Voluntary Liquidation can be treated as capital provided certain conditions are met. Some Shareholders may even qualify for Entrepreneurs' Relief at 10% resulting in even lower rates for CGT.



How will the IR35 Off-Payroll Reforms affect your Business?

What is IR35?

IR35 legislation, which is also known as Intermediaries legislation, has been in place since 2000 and means that contractors working through limited companies are responsible for declaring their employment status.

However, there was a significant change in April 2017 with the IR35 reforms introduced to the public sector, which meant the responsibility was no longer with the contractor but was with the end client, in other words, the public sector client or contract hirer. If there are any errors in the declaration, liability for any unpaid tax lies with them and not the contractor.

In short, if an individual is provided by their company to another client on terms which would normally be considered employment with that client, they would be considered as 'inside IR35'.

Working through a limited company

Should contractors be classified as being 'inside' IR35, then their National Insurance Contribution and Income Tax will be automatically deducted from their earnings, meaning their fee income is reduced. There are various ways of dealing with this.

The first is to renegotiate the contract rate with the end-client, to counter the increased NIC and tax deductions. The second way is to close your limited company and find an alternative, more cost-effective operating structure for your business.

However, you may find that whilst working on different contracts, some fall inside IR35 and some outside IR35. In this scenario, you could consider switching between an umbrella company and your limited company.

Voluntary Strike Off

If you no longer need your company, then it may be an option for you to apply for voluntary strike-off at Companies House. However, you cannot apply for this if your company.

- is already involved in a liquidation process.
- has traded over the last three months.
- has changed names in the last three months.

IR35 MVL

Another alternative is an IR35 Members' Voluntary Liquidation (MVL) which is a procedure to liquidate a solvent limited company. This must be used to extract capital where retained reserves exceed £25,000, following the removal of extra-statutory concession ESC C16 in 2012.

All business assets will be realised and the funds used to pay outstanding creditors before the surplus is distributed to shareholders as capital.

MVL is a tax-efficient, cost-effective means of liquidating a limited company, with the remaining funds distributed as capital rather than dividends. Shareholders eligible for Business Asset Disposal Relief (formerly Entrepreneurs' Relief) will benefit from a reduced capital gains tax rate of 10%.



How Can We Help?

Henderson Loggie started in 1909 and over the years various partners took on insolvency work, however in early 1987 a bespoke insolvency team was established. Since then, the team has moved from strength to strength. Our current Insolvency team members have combined experience of over 160 years. They deal with MVLs, and all types of insolvent appointments from all over Scotland, but also have dealt with English appointments too. Our team provide support to directors, business owners and individuals in assessing the options.

We can support you with:

- Managing cashflow
- Debt recovery
- Advice for Directors
- Implement Members Voluntary Liquidations
- Solution implementation
- Creditor support
- Specialist insolvency advice
- Formal insolvency appointments



Get in Touch

We can arrange to meet with you in person, have a 'Teams' meeting, or call you to get an understanding of your issue and give you expert advice.

We do not charge for initial advice, and you are not obligated to progress matters with us following advice.

For further information contact: [01382 200055](tel:01382 200055).



Shona Campbell | Shona.Campbell@hlca.co.uk
Chair & Partner

Shona is the Chair of Henderson Loggie and leads the firm's Business Recovery and Insolvency team, bringing over 25 years of experience in advising businesses facing financial difficulties. She is a licensed insolvency practitioner, handling formal insolvency appointments for both businesses and creditors across various sectors and sizes. Shona's background includes time in banking, which provides her with valuable insight into the challenges businesses face when they lose lender confidence. She emphasizes the importance of early advice to help clients explore the best options and strategies. Shona also serves as the Convenor of the Institute of Chartered Accountants of Scotland Insolvency Committee.



Donald Scott | Donald.Scott@hlca.co.uk
Director

Donald is a Director in the Business Recovery and Insolvency Team at Henderson Loggie. A Chartered Accountant since 1996 and JIEB qualified in 2002, Donald began his insolvency career over 25 years ago, working with two of the Big-4 firms and later a smaller Private Equity-owned firm. He has extensive experience across a variety of sectors, providing both formal insolvency and advisory services to businesses of different sizes. Donald understands the stress financial difficulties can cause and offers pragmatic, commercial advice in a friendly and professional manner. He also enjoys coaching and mentoring junior team members, sharing his knowledge to help them develop their careers.

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