Striking off companies

Where a company is no longer required, shareholders often find it convenient to make an application for it to be ‘struck off’ the Register of Companies, rather than going through the expensive process of a formal liquidation. This can be particularly convenient in the case of redundant subsidiaries within a group of companies.

In these circumstances any assets remaining within the company at the point of dissolution belong to the Crown, so it is important to distribute the assets before that time. This raises no company law issues insofar as the assets represent accumulated profits. If a company wishes to return share capital to its members it must pass a special resolution, supported by a solvency statement from the directors.

Recovery by the Crown

If a company makes an unauthorised return of share capital to its members, it has a right to recover the amounts concerned. That right of recovery is an asset of the company. When a company is struck off its assets become ‘bona vacantia’ (ownerless goods), and ownership of them passes to the Crown.

In practice, however, the Treasury Solicitor’s Department (TSol), which is normally responsible for the administration of bona vacantia in England and Wales, has indicated that it will not pursue such sums. (This replaced a previous practice under which it did not generally pursue amounts of £4,000 or less.)

The tax position

In normal circumstances a distribution of assets by a company to a shareholder is an income distribution for tax purposes, in the same way as a dividend, except to the extent that it represents a repayment of share capital.

However, a distribution to shareholders in a winding up is not a distribution for tax purposes, but is a capital receipt taken into account in calculating any chargeable gain or loss on the disposal of the shares. The same tax treatment applies where the company has made, or intends to make, an application to be struck off, and makes a distribution in respect of share capital in anticipation of being dissolved, provided:

- at the time of the distribution the company intends to secure, or has secured, the payment of any sums due to it;
- at that time it intends to satisfy, or has satisfied, any debts or liabilities owed by it; and
- the amount of the distribution (or the total amount, if there is more than one distribution) does not exceed £25,000. This cap applies only to distributions of profits; a repayment of share capital will be a capital receipt in any event.

If the company has not been dissolved within two years of the distribution, or if within that time it has failed to secure the payment of sums due to it and to satisfy its own liabilities, these rules will not apply, and the distribution will be treated for tax purposes as an income distribution in the normal way.

For distributions made prior to 1 March 2012 a broadly similar treatment applied under HMRC’s extra-statutory concession C16.