

Value Added tax Information Leaflet

Liquidators and Receivers

1. General

1.1 What is a liquidator

Under the provisions of the Companies Acts, 1963 to 2001, a company may be wound up either by order of the Court or, voluntarily, by resolution of the company. The liquidation of a company is the process by which a company is legally dissolved. The main distinction between the two types of winding up is that while a compulsory liquidation is undertaken under the supervision of the High Court (the court appoints a liquidator to act on its behalf), a voluntary liquidation is normally carried out with little or no reference to the courts, with members or creditors playing a more active role. The principal duties of a liquidator, either Court appointed or voluntary, are to inquire into the company's affairs, realise its assets, pay its debts and distribute any surplus to its members.

1.2 Following the winding-up order or resolution, the liquidator is appointed and every creditor is required to prove his or her debt. In a "members' voluntary winding-up" the company appoints the liquidator. In a "creditors' voluntary winding-up" both the creditors and the company have the right to nominate a liquidator. .

1.3 Where the winding-up is by order of the High Court, the Court appoints the liquidator, usually on the nomination of the petitioner. The order takes effect from the date of the presentation of the petition, with the effect that all disposals by the company after the presentation are rendered void and ineffective, unless the Court otherwise directs.

1.4 What is a receiver

A receiver is a person appointed pursuant to a debenture (loan agreement) or a High Court order, whose main task is to take control of those of the company's assets that have been mortgaged or charged by the company in favour of a debenture holder (lender), to sell such assets and apply the proceeds to discharge the debt owing to the debenture holder.

1.5 A receiver can only liquidate the assets covered in the debenture. The primary duty of the receiver is to the debenture holder that appointed him/her (note that this is

different from a liquidator who must act in the interest of all creditors). The precise action of the receiver will depend on the nature of the debenture but the situation will often arise that the company will continue trading while the receiver is involved in the operation of the company to realise and dispose of the assets covered by the debenture.

1.6 There are certain obligations on receivers in relation to payment of the company's outstanding tax debts (and Revenue enjoys a preferential position in certain instances) but this depends on whether the debenture is based on a fixed charge or a floating charge. The receiver is also responsible for payment of current tax liabilities if he/she decides to run the company for a period. In some instances the company may be able to continue trading even after the receiver has realised the debenture assets and left the company. In any event, however, the appointment of a receiver will usually have a significant impact on the operation of a company.

2. VAT position of liquidators/receivers

2.1 Section 3(7) of the VAT Act 1972 (as amended) provides that goods, being business assets of an accountable person, when disposed of under any powers exercised by another person, including a liquidator or receiver or official assignee, in settlement of a debt , are deemed to be supplied by that accountable person in the course or furtherance of his/her business. It also provides that the obligations imposed in respect of the payment of VAT on the disposal of goods by a liquidator apply in all cases of the winding-up of a company. This provision extends to a voluntary winding-up and to any other winding-up in which the liquidator might not be disposing of the goods in the satisfaction of the debts due. While the provision deems the accountable person to supply the goods, it is the liquidator or receiver who registers for VAT.(see paragraph 3 below.) This requires the liquidator or receiver to make VAT returns and to account for any VAT due on the supply by them of goods owned by the accountable person. This applies whether or not the business of the accountable person continues to be carried on.

2.2 Section 9(2A) of the VAT Act provides that a liquidator/receiver must register for VAT within 14 days of the disposal of goods. Section 19(3)(b) and (c) of the Act sets out the VAT liability of liquidators/receivers while regulation 41 of the VAT Regulations, 2006 provides that any obligations under the VAT Act which a trader in liquidation was obliged to meet, shall be met by the liquidator. The legal text and the relevant extracts from the Notes for Guidance are set out in Appendix I to this leaflet.

2.3 To whom does Section 3(7) apply?

The provision applies to receivers appointed to sell the business in whole or in part or to trade towards the most substantial recovery of the debt owed to the charge holder. In the case of receivers appointed under a fixed charge, the receiver is taxable on the fixed charge only (see paragraph 7 below). It also applies to liquidators, appointed compulsorily or voluntarily by virtue of either a fixed (specific) or floating (general)

charge over one or more of the assets. The provision is not limited to liquidators and receivers but extends to goods disposed of by any person acting under any power towards the satisfaction of a debt owed or in the course of the winding up of a company. The disposal need not be in satisfaction of a specific debt.

2.4 It does not apply to an official assignee in connection with bankrupts.(see paragraph 17 below). Neither does it apply to the supply by the State or a local authority of goods acquired compulsorily by it or the supply of goods by a sheriff or other person acting under statutory authority. (see paragraph 18 below)

2.5 Where a liquidator or receiver carries on the business, as distinct from taking control of the company towards the satisfaction of a debt or for the purposes of winding up of the company, the liquidator or receiver must register for VAT in his/her own right.

2.6 A liquidator/ receiver is not obliged or entitled to register for VAT where the supplies would not be taxable. For example, where the goods to be disposed of consist entirely of a non-taxable transfer of a business or a motor vehicle on which no credit had been allowed, then application for VAT registration will not be accepted.

2.7 Since Section 3(7) applies to the supply of goods only, the sale of services , such as copyrights, licences and other intangible assets by a liquidator/ receiver must be accounted for under the accountable person's own VAT number.

3. Registration for VAT.

3.1 Subject to the exceptions listed below, although the VAT registered person , or a person who ought to have been VAT registered , is deemed to have supplied the goods, a liquidator or receiver must register and account for VAT in respect of each separate liquidation or receivership, for VAT due on those supplies, irrespective of their value.

(Subsection 9 (2A) of the VAT Act 1972 (as amended) requires that a person, such as a receiver or liquidator who disposes of goods forming part of the assets of an accountable person, and in respect of which VAT is payable, must, within 14 days of such disposal, apply for registration for the purpose of accounting for tax).

3.2 The assets which give rise to the liability for VAT on disposal must have passed into the control of the liquidator/receiver before registration is granted

3.3 Application for registration should be made on form TR2. The Company Name should be entered in the Name Field with “in liquidation” or “in Receivership“ appended, e.g. REDCAR SALES LTD IN LIQUIDATION or REDCAR SALES LTD IN RECEIVERSHIP

The Liquidator/Receiver/Assignee name and address should be entered as the Official Address e.g.

**Per P Murphy Liquidator, P Murphy & Co., Main Street, Dublin
or**

Per P. Murphy, Receiver, P Murphy & Co., Main Street, Dublin.

A new VAT number will be allocated to each such registration.

3.4 It must be established that assets which give rise to liability on disposal have passed into the control of the liquidator/receiver. Registration will be refused if there are no taxable assets for disposal.

3.5 The liquidator/receiver should apply to be registered for VAT in the Revenue District responsible for the taxable person's affairs. A separate registration number to that of the taxable person will be allocated.

3.6 When an existing liquidator or receiver resigns or is replaced the existing registration should be amended to reflect the new name and address details. A new registration number should not be allocated. However where the appointment of a receiver is followed by the appointment of a liquidator, the latter must be registered under a new registration number.

4. Group registration

4.1 If a company in liquidation or receivership was, prior to liquidation or receivership, registered as a member of a group for VAT purposes, then the liquidator or receiver may apply for a corresponding group registration. It is the remitter which will account for VAT in the VAT return for the VAT Group.

5. Non-Taxable supplies

5.1 A liquidator or receiver is not an accountable person in respect of the supply of business assets of persons who are not properly VAT registered persons.

5.2 Goods disposed of by a liquidator or receiver which are the assets of a VAT registered person are not taxable in the following circumstances:-

- The transfer of goods being a transfer of a totality of the assets or part thereof, of a business, even if that business or part thereof had ceased trading, where those transferred assets constitute an undertaking, or part of an undertaking, capable of being operated on an independent basis.
- Business goods in respect of which the company in liquidation or receivership was not entitled to a VAT deduction (eg. petrol acquired **other** than as stock in trade or acquisitions of property in certain instances)
- Goods returned to a supplier under reservation of title arrangements. If these goods were invoiced to the company in liquidation or receivership and a VAT deduction was taken, the supplier is obliged to issue a VAT credit note. This will have the effect of cancelling the deduction.

6. Property transactions

6.1 Since goods sold by a receiver or liquidator are deemed to be supplied by the company in receivership or liquidation, disposals of immovable goods which are assets of a company are deemed to be an economic activity and subject to the same rules as if the company had itself supplied the property. In other words the supply of freehold or freehold equivalent interests in “new” properties is subject to VAT. The joint option to tax can be availed of and the transitional rules, for properties which were taxable under the pre 1 July, 2008 VAT rules and which are supplied on or after that date, apply. The appropriate Capital Goods Scheme rules will also apply. [Information on the treatment of VAT and property transactions generally is set out in the VAT on Property Guide, April 2008.]

6.2. Where such a transfer of ownership takes place in the course of the ‘transfer of a business’ rules(a transfer of a totality of the assets, or part thereof, even if that business had ceased trading, where those transferred assets constitute an undertaking or part of an undertaking capable of being operated on an independent basis) to another accountable person, that transfer is deemed not to be a supply for VAT purposes. This means that no VAT is chargeable. There are special rules within the Capital Goods Scheme to deal with such transactions. There are basically two main rules dealing with the transferee to enable him or her to operate the scheme .One applies where the transfer occurs during the period when the sale of the property would have been taxable but for the transfer of business relief (i.e. while the property was considered “new”). The second rule applies when the transfer of the property occurs outside this period i.e. when, if it were supplied other than as part of a transfer of a business, the sale would have been exempt. There are also rules dealing with the transferor [see the VAT on Property Guide, (April, 2008)].

6.3 Where a company had financed its acquisition of a property by means of a standard legal mortgage, the mortgagor will retain a legal interest in the property. If the company defaults on its repayments and the property is part of the assets of the company’s business and is repossessed and disposed of by the mortgagee, then there is considered to be a transfer of the property between the mortgagor and the mortgagee. The mortgagee must account for any VAT due on the disposal of the property by it, using the special VAT number appropriated to it for such purposes.

6.4 Since Section 3(7) applies to goods only, a liquidator/receiver is not taxable in respect of the transfer of a leasehold interest in property other than an effective freehold interest. It is the company itself which must account for any VAT due on such supplies.

7. Supplies of services

7.1 The liquidator or receiver is not liable to VAT for the supply of services by the company in the course of liquidation or receivership. The company is, however, liable on transactions not covered by the terms of the receiver or liquidator's appointment.

7.2 The transfer of goodwill or other intangible assets of a business, in connection with the transfer of a business or part thereof, even if that business or part thereof had ceased trading, or in connection with a transfer of goods, as outlined in the first indent of paragraph 5.2 above, to a taxable person, is not a supply. In circumstances where the supply of intangible assets is taxable, it is the company which must account for the VAT due.

7.2 The liquidator or receiver is liable for VAT on his/her charge to the company for professional services rendered by him/her and such VAT is deductible by the Company, subject to the normal rules.(see paragraph 12 below)

8. Obligations of liquidators and receivers under VAT law

8.1 Liquidators and receivers are obliged under Sn19(3)(b) of the VAT Act 1972(as amended) to account for VAT on the disposal of the business assets and to make a VAT return at the end of each taxable period. The liquidator/receiver should send to the accountable person whose goods are disposed of, a statement containing such particulars as may be specified in regulations and treat the amount of tax as a necessary disbursement out of the proceeds of the disposal. The owner of the goods disposed of by a liquidator or receiver is entitled to exclude from any VAT return required to be made by him/her the tax for which the person disposing of the goods is required to account.

9 . Receivers appointed under a fixed (specific)charge

9.1 In the case of receiverships in which a receiver is appointed under a fixed (specific) charge, the receiver is taxable on the disposal of the specific asset only. A company accounting on the cash basis of accounting is itself (not the receiver) liable on moneys received in respect of transactions (supplies of goods and services), whether pre or post receivership. The company is, in any event, liable on transactions not covered by the terms of the receiver's appointment.

10. Carrying on the business

10.1 Where a liquidator or receiver is authorised to continue to trade and does so, as opposed to merely taking control of the company for the purposes of the satisfaction of a debt owed by the taxable person or the winding up of the company, then the

liquidator or receiver is required to register and account for VAT in respect of goods and services, subject to the threshold limits.

11. VAT due

11.1 The amount of VAT on which liquidators and receivers are accountable in respect of goods disposed of by them to unregistered persons is the VAT content, at the appropriate rate(s), in the amount received from the disposal. The proceeds of all such disposals are regarded as being VAT inclusive. The usual rules apply concerning disposals to a taxable person, whereby VAT must be charged and accounted for on the consideration charged and the amount of VAT must be shown separately on a VAT invoice.

11.2 Where no money is paid in respect of a disposal of goods (eg. In the case of goods distributed in specie among creditors or shareholders), an amount equivalent to the VAT at the appropriate rate(s) on the open market value of the goods, is payable.

12. VAT deductible

12.1 Claims for VAT deductions should be segregated between pre and post liquidation/ receivership transactions as follows:-

- Deductible VAT Incurred by a liquidator or receiver on goods or services supplied to him/her in connection with a liquidation or receivership should, subject to the normal restrictions, be claimed in the VAT returns that he/she is required to make in respect of goods disposed of by him/her. Claims for VAT charged on a liquidator's/receiver's professional services may be included in these returns also. The liquidator's/receiver's charges are considered as overheads of the company in liquidation/receivership and are deductible to the extent of the company's entitlement to a deduction for inputs prior to his/her appointment.
- VAT adjustments arising out of pre receivership/liquidation transactions should be claimed under the company's original VAT number and not the VAT number of the company in liquidation or receivership.

13. Bad debts

13.1 Relief for bad debts is allowable, subject to the usual conditions. Claims for relief should be made on a supplementary VAT return under the company's original VAT number.

14. Invoices, credit notes, settlement vouchers.

14.1 Liquidators and receivers should issue invoices and credit notes on the same basis as accountable persons, the name and address of the person issuing the document being “ Company X in liquidation/ receivership per (eg.) P.Murphy, liquidator.receiver” (as appropriate), the VAT number on the document being the number allocated for that purpose.

14.2 Goods returned to a company in liquidation or receivership should be treated as having been bought back by the liquidator or receiver. If the person returning the goods does not issue a VAT invoice, the liquidator should issue a settlement voucher and take an appropriate deduction in his/her return.

15. Statement by liquidator or receiver to the owner of the goods

15.1 A copy of the invoice issued to the purchasers of the goods disposed of suffices for this purpose.

16. Examiners

16.1 An examiner is a person, appointed by a company or the Court, who assesses the affairs of a company put under the protection of the Court in certain circumstances, to consider whether the company is capable of rescue and to prepare a plan for the rescue of the company, its undertakings or substantial parts thereof. The company will in the normal course continue to trade and to account for VAT due on its supplies of taxable goods and services.

16.2 One implication of the appointment of an examiner is that debts may not be executed against the company. On application to it, the Court may make an order empowering the examiner to dispose of the company’s assets if he/she considers that this would facilitate the achievement of his/her objectives. The provisions of Section 3(7) of the VAT Act will not, in the normal course, apply to an examiner as the company continues to trade and makes the supplies.

16.3 Revenue enforcement activity has to be suspended while the examiner is in place. To stop the tax debt continuing to grow, Revenue usually requests the Court to direct the examiner to pay current tax debts while the company is in examinership

16.4 The Court invariably seeks Revenue’s views on the proposals being formulated by the Examiner. In addition Revenue, (Collector General Insolvency Section, Dublin) along with other creditors, is entitled to vote on whether or not to accept the proposals being put forward. Revenue’s position will depend on the circumstances of the case (e.g. previous tax collection history, whether there will be a change of directors etc.).

17. Official Assignee

17.1 Where a business person other than a company gets into financial difficulties and is unable to meet liabilities a creditor may apply to the Courts to have the defaulter adjudicated bankrupt. When the Court grants the application the bankrupt must cease business and may not dispose of assets. These become vested in the Official Assignee of the Court. Sn3(1)(d) of the VAT Act provides that the transfer of the goods to their acquisition by the Assignee is a taxable event and the bankrupt is liable. The Official Assignee, being an Officer of the State, is not a taxable person and any disposal of assets by him/her is not subject to VAT.

18. Disposals by the State, local authority, sheriff, etc. after compulsory acquisition

18.1 Section 3(1)(d) of the VAT Act 1972 (as amended) provides that the transfer of goods is a supply of goods on which VAT is accountable by the taxpayer where these goods are acquired compulsorily by the State, including a local authority or are seized from a person by a Sheriff or other person acting under statutory authority. Such public bodies are not liable to VAT on their onward disposal of the goods.

19. Further Information

19.1 Enquiries about any issue contained in this Information Leaflet should be addressed to the Revenue District responsible for the company's tax affairs. Contact details for all Revenue Districts can be found on **the Contact Details Page**.

**VAT Appeals and Communications Branch
Indirect Taxes Division,
DublinCastle**

June 2009

APPENDIX 1

VAT law and Notes for Guidance on liquidators/receivers

VAT Act 1972 (as amended)-Sn3(7)

- (i) Where, in the case of a business carried on, or that has ceased to be carried on, by an accountable person, goods forming part of the assets of the business are, under any power exercisable by another person, including a liquidator and a receiver, disposed of by the other person in or towards the satisfaction of a debt owed by the accountable person, or in the course of the winding up of a company, they shall be deemed to be supplied by the accountable person in the course or furtherance of his business.
- (ii) A disposal of goods under this subsection shall include any disposal which is deemed to be a supply of immovable goods under section 4(2).

Consolidated Notes for Guidance –Sn3(7)

Subsection (7)(i) deems goods which formed part of the business assets of an accountable person, which are disposed of under powers exercised by another person, to be supplied

“by the accountable person”

and

“in the course or furtherance of his/her business”.

This subsection deals with sales of an accountable person’s assets by a liquidator or a receiver as well as other persons (such as a mortgagee) who might dispose of goods forming part of the assets of an accountable person in settlement of a debt.

It also provides that the obligations imposed in respect of the payment of VAT on the disposal of goods by a liquidator apply in all cases of the winding-up of a company.

The main effect is to extend the section to cover a voluntary winding-up and any other winding-up in which the liquidator might not be disposing of the goods in the satisfaction of the debts due.

VAT Act 1972 (as amended)—Sn9(2A)

(2A) Every person who disposes of goods which pursuant to section 3(7) are deemed to be supplied by a taxable person in the course or furtherance of his business shall, within fourteen days of such disposal, furnish in writing to the

Revenue Commissioners the particulars specified in regulations as being required for the purpose of registering such person for tax

Consolidated Notes for Guidance—Sn 9(2A)

Subsection (2A) requires that a person such as a receiver or liquidator who disposes of goods forming part of the assets of an accountable person, and in respect of which VAT is payable, must within 14 days of such disposal apply for registration for the purpose of accounting for tax.

VAT Act 1972 (as amended)--Sn 19(3)(b) and (c)

(b) A person who disposes of goods which pursuant to section 3(7) are deemed to be supplied by an accountable person in the course or furtherance of his business—

(i) shall within 9 days immediately after the tenth day of the month immediately following a taxable period furnish to the Collector-General a true and correct return, prepared in accordance with regulations, of the amount of tax which became due by such accountable person in relation to the disposal, and such other particulars as may be specified in regulations, and shall at the same time remit to the Collector-General the amount of tax payable in respect of the taxable period in question,

(ii) shall send to the person whose goods were disposed of a statement containing such particulars as may be specified in regulations, and

(iii) shall treat the said amount of tax as a necessary disbursement out of the proceeds of the disposal.

(c) The owner of goods which pursuant to section 3(7) are deemed to be supplied by a accountable person in the course or furtherance of his business shall exclude from any return, which he is or, but for this subparagraph, would be, required to furnish under this Act, the tax payable in accordance with paragraph (b).

Consolidated Notes for Guidance 2008—Sn 19(3)(b) and (c)--Liability of Liquidators and Receivers

Paragraph (b) deals with the liability of liquidators and receivers. Effectively the liquidators or receivers of an accountable person's business must account for VAT on the disposal of the business assets.

Subparagraph (i) provides that a person such as a liquidator or receiver who disposes of goods forming part of the assets of an accountable person must furnish a return at the end of each two-month taxable period and pay any tax due in respect of such sales;

subparagraph (ii) provides that the person referred to in (i) must send to the accountable person whose goods are disposed of such details as may be specified by regulations;

subparagraph (iii) treats the tax due as a necessary disbursement out of the proceeds of the disposal.

Paragraph (c) provides that the owner of the goods disposed of by a liquidator or receiver will be entitled to exclude from any VAT return required to be made by him/her the tax for which the person disposing of the goods is required to account.

Regulation 41, VAT Regulations 2006

If a taxable person.....being a body corporate, goes into liquidation, anything which he she would have been liable to do under the Act or these Regulations shall be done by.....assignee, trustee, committee or liquidator, as appropriate.