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# NEWSLETTER

SPRING 2011



GRIFFIN & KING  
LICENSED INSOLVENCY PRACTITIONERS



Tim Corfield  
Managing  
Director  
talks about  
common  
problems  
encountered  
in practice

## Director's loan account – getting security

It is a common situation that directors of companies will inject substantial sums into the company from their personal resources. If there are unencumbered assets within the company the directors may attempt to take a charge on the assets. Any such charge must be taken out prior to the monies being injected. If the charge is taken out after the monies are invested in the company the charge may not be valid.

**The date when a charge is taken out is called the "relevant time".**

The date when a charge is taken out is called the "relevant time". Where a company is faced with insolvency, directors need to be aware of the possibility that they may lose their security given to them by the charge. This will happen only if the charge was granted less than two years (as directors are connected parties) before the date of the insolvency and the security will be limited to the amount of money invested into, or goods and services provided to, the company after the creation of the charge. **Contd. pg 2**



### Dividend Policy

Directors beware! Page 2



### Fuel for the nation's economic growth

Tim comments on the recent budget  
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### Keeping you informed

- Company Voluntary Arrangement
- Individual Voluntary Arrangement - Consumer Debt
- Liquidation
- Individual Voluntary Arrangement - Business Debt
- Administration
- Bankruptcy



# G&K ADVICE

## DIVIDEND POLICY

**It is very common for a company to have a dividend policy.**

This is governed by Section 830 of the Companies Act 2006 which says that a company can only make a distribution (or dividend) out of profits available for the purpose. The dividend needs to be justified by reference to 'relevant accounts' – these are the company's last annual accounts (properly drawn up and filed), interim accounts or initial accounts (which have the same requirements as annual accounts). These accounts need to be properly prepared including a profit and loss account and balance sheet showing all assets, liabilities, share capital and reserves.

It is very dangerous to continue a dividend policy if the company is approaching an insolvent position.

Our experience is that in smaller companies it is more common to come across accounts that show distributions that exceed the available profits.

**Often directors assume that they are making profits and assume that the drawings taken out of a company will be treated as dividends in the year end accounts by their accountants. In a profitable company this certainly has tax advantages.**

However, if the company is trading at a loss and the directors are unaware, then this could have serious consequences for directors in an insolvent position. A Liquidator or Administrator will convert the drawings taken out by the director (which the director thought were going to be dividends), to an overdrawn director's loan account and demand that this money be repaid to the company.

Therefore, directors should be aware that they need to produce up to date management accounts to keep them aware of the available profits and the solvency position of the company. If directors are not able to produce management accounts, they should request their accountant to produce accounts, at least on a quarterly basis.



## Director's loan account contd

In the case of any other person, a charge created by them, at a time in the period of 12 months ending with the onset of insolvency will be subject to certain exceptions. For further reference see Section 245 of the Insolvency Act 1986 or call us to discuss.

Directors should also be aware that charges on a company's property created prior to their charge have priority unless there is a 'Deed of Priority' in force, having been agreed by both charge holders beforehand.

**Directors should be aware that they could be at risk of losing security if their company is faced with an insolvency situation within two years of the creation of a charge.**

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**Walsall Hospice**

**Our chosen charity for the year 2011  
is Walsall Hospice**

**For advice on insolvency issues call us now on any of the numbers opposite**

**www.griffinandking.co.uk | email: enquiries@griffinandking.co.uk**

# What do we do?

We find solutions for businesses and individuals who have financial problems

## SERVICES FOR LIMITED COMPANIES

**Administration** - This procedure protects insolvent companies from their creditors while a restructuring plan is completed.

**Liquidation** - To liquidate a company is to formally wind up its affairs – trade ceases, assets realised and the liabilities quantified. If the debts exceed the value of the assets the company is insolvent. In this situation it is the creditors that control the liquidation process.

There are two types of formal process to deal with an insolvent Liquidation;

- **Creditors Voluntary Liquidation (CVL)**
- **Compulsory Liquidation (CL)**

The key difference between a CL and a CVL is that a CL is driven by a creditor or creditors through the courts. A CVL is driven by the directors.

### **Company Voluntary Arrangement - (CVA)**

A CVA is a procedure by which a company can approach its creditors with a proposal to pay back the debts owed, in full or in part over a period of time.

### **Members Voluntary Liquidation - (MVL)**

This is a solvent liquidation. A company ceases to trade. All assets realised and the liabilities quantified and paid in full within a twelve month period.

## SERVICES FOR CONSUMERS, SOLE TRADERS & PARTNERSHIPS

### **Individual Voluntary Arrangements – (IVA)**

**Consumer Debt** An IVA is a tailored proposal by a debtor to his creditors to repay debt over an extended period of time. Typically, up to 75% of debt can be written off.

**Business Debt** When a business is unincorporated a proprietor is personally liable for all the business debts. This means that an unincorporated trader has unlimited liability and may have to dispose of all of his assets to meet the amounts due to his creditors. When a proprietor or partners of a business cannot pay the debts of the business as they fall due it is said to be insolvent. An IVA is a tailored proposal by a debtor to his creditors to repay debt over an extended period of time. Typically, up to 75% Of debt can be written off.

# Business briefings

## Our next seminars



**Seminars: What's in an Insolvency Practitioners' Toolkit - sledge hammer or tissues?**

### **Bournemouth - 10th May 2011**

12.30-2.30, Menzies East Cliff Hotel, to reserve a place email [janet.peacock@griffinandking.co.uk](mailto:janet.peacock@griffinandking.co.uk)

### **Walsall - 17th May 2011**

12.30-2.30, The Village Hotel, Walsall to reserve a place email [janet.peacock@griffinandking.co.uk](mailto:janet.peacock@griffinandking.co.uk) or book online at [www.griffinandking.co.uk](http://www.griffinandking.co.uk)

**Places limited! Book early**

## Signature Dinners

These exclusive Signature Dinners will be held bi-monthly. The Dinners have been introduced for the



benefit of Local CEOs, Managing Directors, Partners and Senior Managers to get together.

They are designed to facilitate networking at a higher level and create and nurture long-standing relationships. Participation at

these Signature Dinners is by invitation only.

### **Forthcoming Signature dinner dates**

Last Thursday in the month:

**26 May/ Sept 29/ Nov 24**

For further information email:

[janet.peacock@griffinandking.co.uk](mailto:janet.peacock@griffinandking.co.uk)

# THE LAST WORD...

## Fuel for the nation's economic growth

**That was what Chancellor George Osborne wanted to deliver in his 2011 Budget. Tim Corfield, comments further on whether this has been achieved.**

George Osborne said in his statement the 'Budget is about reforming the nation's economy, so that we have enduring growth and jobs in the future'. With this in mind from April 1, 2011 the main rate of corporation tax will be reduced to 26 per cent and then to 25 per cent from next April. It will drop to 24 per cent from April 1, 2013 and 23 per cent from April 1, 2014. This has already resulted in Sir Martin Sorrell, director of WPP, the international advertising agency suggesting that his firm could relocate its tax headquarters to the UK. Chancellor Osborne is hoping others will follow.

It's not just the large companies that the Chancellor wants to woo. Those firms with fewer than 10 staff

will breathe a sigh of relief because they won't have any new regulations imposed on them for the next three years. They'll also benefit from an extended business rate relief holiday for another year.

Additionally, 43 tax reliefs will be scrapped as part of the simplification of tax codes and 21 enterprise zones are to be created. The Entrepreneurs' Relief limit on the disposal of a business has been doubled to £10 million. There are new rules to require planners to prioritise growth and jobs as well.

The Chancellor has also tried to appeal to employees by increasing tax relief from 40p to 45p for the first 10,000 miles of business travel for drivers using their own cars.

The government will be carrying out a consultation on the integration of income tax and national insurance contributions, which should streamline the process.

The Chancellor didn't forget charities either because he has tried to make it more attractive for

*"All in all, this Budget should certainly help to further stimulate productivity in the private sector, which the government desperately needs if it is to shoulder the job losses from the public sector."*

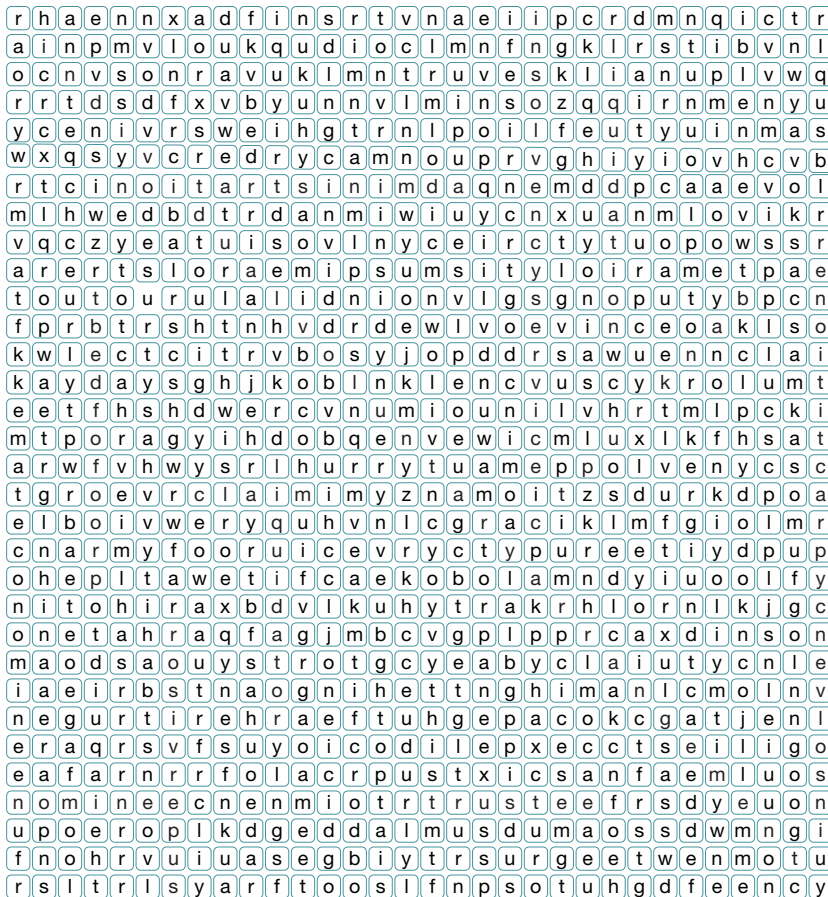
us all to make donations. Those giving one tenth of their estate to charity will now enjoy reduced inheritance tax rates.

The 1 pence fuel duty freeze will also be a welcome benefit for struggling motorists.

And for those under 65 the personal allowance will be increased by £1,000, from £6,475 to £7,475 for 2011/12.

In conclusion, the Chancellor has done a reasonable job given the constraints that have been set by previous Budgets but only time will ultimately tell how successful these measures will be.

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## Wordsearch Competition

### WIN a bottle of champagne!

- Liquidation
- Administration
- Bankruptcy
- Individual voluntary arrangement
- Proof of debt
- Claim
- Insolvency Service
- Insolvency Practitioner
- Trustee
- Liquidator
- Supervisor
- Nominee

Simply find the hidden words in the wordsearch opposite. Complete your details and either email to: [janet.peacock@griffinandking.co.uk](mailto:janet.peacock@griffinandking.co.uk) or post, clearly marked for:

**Janet Peacock  
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*Good luck!*

