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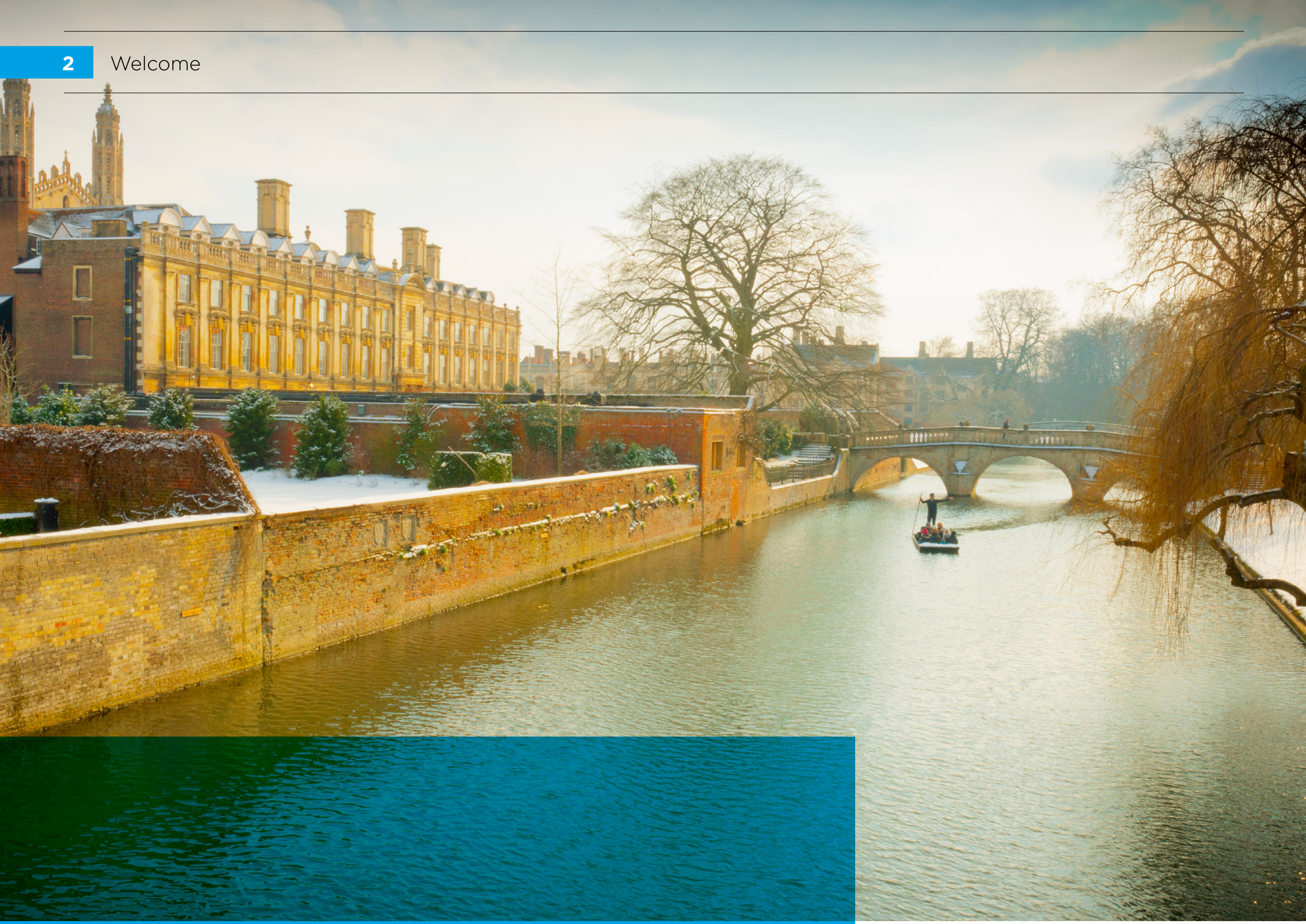
Winter 2021.

Recovery newsletter



Welcome

Happy new year and welcome to our winter newsletter following what has been a challenging year for all.

As we face another lockdown you will be aware the furlough scheme has again been extended until the end of April 2021 and further grant support announced.

The government has also extended the temporary suspension of statutory demands, and winding-up petitions from being presented where there is an inability to pay debts due to the COVID-19 pandemic.

Given the extension of the temporary measures, the resulting lack of creditor pressure and the continued government support, insolvencies have been much reduced in 2020 and are likely to remain so in the first quarter of 2021. However, once things start to return to normal and support measures are withdrawn there will inevitably be an increase in business failure.

Members Voluntary Liquidations ("MVLs")

Given the reduction in insolvencies and likely upcoming tax changes here we have focused on solvent Liquidations.

Capital Gains Tax

One of the main reasons for an MVL is that it is a tax efficient way of winding up a solvent company which has reached the end of its life.

This includes distributions from MVL's being treated as capital and subject to capital gains tax. The Office for Tax Simplification has carried out a review of capital gains tax, as a result it is considered likely that the chancellor will increase capital gains rates in the next budget scheduled for 3 March. There has been speculation that they could be adjusted to come into line with income tax rates.

Business Asset Disposal Relief ("BADR")

BADR replaced Entrepreneur's Relief in April 2020.

As part of this change the lifetime allowance was reduced to £1 million from £10 million, although the reduced allowance is still likely to be sufficient for many clients. Where applicable your clients could still reduce their capital gains tax rate on distributions from an MVL down to 10%. It should be noted there has also been criticism of this relief with calls for it to be reviewed further or removed.

Act Now

Given the timing of any possible changes, exit plans have inevitably had to be brought forward. In order to extract funds in a tax efficient manner, including benefiting from capital distributions made at the current rates and the possibility of further reductions where BADR is applicable, an MVL with distributions before the 3 March 2021 is likely to be an attractive option.

We are available to speak to you or your client regarding potential MVLs. In most cases we can assist in placing a Company into Liquidation in a short period of time with distributions being made within a week of Liquidation where appropriate indemnities are provided.

Fees can be agreed in advance on either a fixed fee basis or time costs depending on your client's circumstances and we are always happy to provide a quote.

Other matters

Directors' drawings

One of the areas reviewed by an appointed Insolvency Practitioner in an insolvent company is the directors' drawings. Given the current economic climate and general uncertainty moving forwards it may be wise to review how drawings are dealt with in light of the increased risks of a future insolvency event.

We often speak to directors who claim that at least an element of their regular drawings are dividends. On closer inspection this is often not the case, they have either not followed the correct procedure, have no supporting paperwork, there aren't the necessary distributable reserves or dividends weren't going to be declared until the end of that year. An appointed insolvency practitioner is likely to either consider these unlawful dividends to be recovered, or where a dividend is yet to be declared pursue the overdrawn directors' loan account as an asset of the Company.

In uncertain times, it is worth reviewing these risks when weighing up any tax benefits and considering whether taking drawings as salary, keeping loan accounts to a minimum and reviewing when and how dividends are declared could be the safest option.

It is also worth considering that in a recent case involving the Liquidation of Wow Internet Limited the court gave the benefit of doubt to the appointed liquidator where there was an absence of company records that supported the director's account of expenditure. Highlighting the importance of good records and contemporaneous notes.

HMRC – The return of preferential status

As detailed in our last newsletter, despite a delayed introduction due to COVID-19 HMRC gained secondary preferential status on 1 December 2020. This only relates to taxes collected on behalf of HMRC, including PAYE and VAT. This is likely to reduce returns to both unsecured creditors and secured creditors holding a floating charge with a possible negative impact on a bank's appetite to lend.

Early advice

As always seeking advice early increases the likelihood that the company or business can be saved.

However, if a rescue procedure is no longer possible or the position is terminal, we can assist the directors in placing the company into Liquidation in an efficient and professional manner.

If you or your clients require advice or have any questions relating to the contents of this newsletter, please call Ben Dyer or Kate Merry on 01223 728 222. We are always happy to have a free initial consultation or chat.

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