

## Winding up Insolvent LTCs...

It is not uncommon for a LTC to be insolvent with a current account owing to its shareholder. This situation will arise for example whenever a person establishes a LTC to hold an investment property and the property is sold at a loss.

There is a school of thought that winding up the LTC will crystallise a tax liability in these circumstances. That school of thought essentially concludes that the shortfall in payment of the current account is taxable income.

If this is the result, it is potentially disastrous for the shareholder and is a significant downside to using a LTC. In contrast, this situation was not problematic in the case of a LAQC. That is because under the LAQC rules (unlike the LTC rules) it was possible to revoke LAQC status with effect from the commencement of the year in which revocation occurs. By doing so the shareholders ceased to be liable for the tax liabilities of the LAQC. This is not possible in the case of a LTC (though with forward planning it may be possible to arrive at the same result if the winding up is organised to occur in the year following revocation of LTC status).

The view that a tax liability arises here stems from the treatment of a LTC on winding up. Shareholders are treated as having disposed of their rights and obligations in relation to the LTC at market value. Arguably this extends, effectively, to disposal of the LTC's obligation regarding the current account at market value (which will be nil). Result: a tax liability on applying a base price adjustment under the FA Rules (assuming they apply).

This is not my view however. My view is that at least in circumstances where there is only one shareholder, no tax liability arises. My view relies on section HB1 which treats arrangements entered into by the LTC as entered into by the shareholders in proportion to their ownership.

In relation to a shareholder current account this results in the debt being owed to any held by the same person. This must mean that the debt is extinguished as one cannot owe money to oneself. If the debt is extinguished it follows that there cannot be an arrangement or amount on which a base price adjustment can operate. In other words there is, in my view, no tax liability here. This might not be true if there is more than one shareholder; such circumstances would need to be separately analysed.