

Directors' loan accounts

I am owed money by my company – can I get it out before I liquidate?

It is very common for small and medium sized businesses to have some mingling of company and personal money – perhaps the directors put in a start-up fund, or the Company has needed inputs of cash to get through periods when money was tight. Such advances are usually put to a “Director’s loan account” in the books, reflecting a debt owed by the company, *usually unsecured and interest free. (*Other rules apply to DLAs secured against company assets; contact us to discuss).

If the company is now facing insolvency – can you get your unsecured DLA repaid?

The short answer to that is – no. Liquidation and other insolvency processes involve realisation of assets and distributing proceeds to creditors in an order of priority laid down in statute and on the basis of ‘pari-passu’, which means treating creditors equally and evenly. So if, for example, you repay your DLA prior to liquidation, that is putting you in a better position than other creditors who would otherwise have shared that money with you. This is known as a “preference” and legislation gives liquidators ability to reverse the transaction(s) – this means you would have to repay what you took, along with costs and interest if applicable.

It is important to take professional advice on DLAs as soon as you think the Company is insolvent.

I owe my company money - will I need to repay my DLA when my life’s work and only income stream is liquidated?

As unfair as it may seem, if you have accumulated a DLA whilst trading and the company is liquidated, the DLA is an asset that a liquidator will look to realise. Often this will be known and discussed before liquidation so that everyone knows that arrangements will need to be made for repayment. However, it is also not that uncommon for directors of smaller business to take funds periodically and think of it as earnings, but not realise that the payments have not been processed properly. As a result, directors might not really know what they owe and the amount can come as a surprise when the liquidator reconciles the account.

It is important that directors have an idea of the level of their DLA and ideally will engage with the company’s accountants to reconcile an account before liquidation. The liquidator may be open to discussing terms of settlement, whether that is setting up a payment plan, or a lump sum offer; in either case, the liquidator will ask for disclosure around your income and expenditure and assets and liabilities so they can assess what you can afford.

We appreciate this can be awkward and personal for directors, who might already be facing uncertainty and upset about the insolvency. We aim to resolve these matters quickly and effectively so that arrangements can be made that are agreeable to creditors and so that you can move on.