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How much Dividend can I Take?

There is sometimes a general presumption that dividends may be paid out of any cash that happens to be in the bank account at the time. But it's nothing like so simple as that.

The basic principles are to be found in the Companies Act 2006. In general, a private company can distribute the whole of its accumulated realised profits less its accumulated realised losses. In practice, unrealised losses have to be considered as well. Apart from statutory matters, account must also be taken of any provision of a company's Memorandum or Articles restricting dividends.

It is a fundamental rule of law that dividends may not be paid out of capital. So, for example, a dividend based on accounts which show available profits would be *ultra vires* if made after subsequent losses have eliminated those profits. Directors who make an unlawful or imprudent dividend may be held personally liable to account for it to the company.

The Companies Act makes shareholders liable to repay a distribution if, at the time of the distribution, they knew, or had reasonable grounds for believing, it to be illegal.

The message here is that before declaring a dividend, the directors must be as certain as they can be that there are sufficient distributable reserves available, *taking into account any corporation tax on profits earned, and losses incurred, since the last annual accounts were prepared*.

This may necessitate the production of reliable management accounts prepared using the same accounting policies as the annual accounts in order to give a true and fair view of profits, losses, assets and liabilities, share capital and reserves.

We can help in this area and should be pleased to discuss it with you.