David Beckman & Co Ltd
Chartered Accountants & Chartered Tax Advisers

62 The Street
Ashtead
Surrey
KT21 1AT

T: 01737 844322 F: 01737 844162
Email: david@dbeckman.com

WINDING UP A COMPANY VOLUNTARILY – TAX PLANNING AND OTHER ISSUES

One of the main tax planning issues for companies is how to extract money from the company yet pay the least amount of tax. The voluntary winding up of a solvent company offers a number of tax planning opportunities. In particular, there are two main ways to save tax:

1. A combination of pre-cessation dividend or dividends, drawings and / or a company pension contribution

2. Taking the remaining assets of the company out as capital rather than income

I deal with the two tax planning strategies in more detail below but be aware that the procedure for winding up a company varies depending on whether the net assets at the date of cessation of trade are more or less than £25,000.

If the net assets are less than £25,000, there is no need to appoint a formal liquidator to deal with the winding up. Instead, we as the accountants are able to deal with the whole process.

Where assets exceed £25,000, you'll need to appoint a liquidator. A liquidator's costs range from £1,600 to £4,000 plus VAT, depending on the nature of the assets held by the company and the number of creditors/the complexity and the extent to which they are prepared to undertake extra work as and when required to effect the liquidation (see more details about this in Section 6).

1. A pre-cessation dividend or dividends, drawings or pension contribution

a) Dividends

The first thing to consider is whether and the extent to which the company should make a pre cessation dividend or d vidends to the director(s) and shareholders. This applies whether the net assets of the company after any dividends exceed £25,000 or not.

The payment of dividends is always subject to there being sufficient post-corporation tax profits. Assuming there are sufficient post-tax profits, it is best to strip out cash as dividends in order to fully utilise the basic rate band (for 2018/19 = £46,350 gross and for 2017/18 = £45,000 gross) and not pay any personal higher rate tax. Our factsheet on dividends explains more about this. For 2018/19, dividends above £2,000 will suffer 7.5% tax compared (for 2017/18 it was dividends above £5,000), whatever your overall level of income – BUT this method of extraction of funds from a company remains highly tax efficient.

For us to calculate the optimum amount of dividends, we will need very good estimates from you of all your sources of other income in the tax year in which the company ceases to trade. We will need this information for you, your partner/spouse if relevant and any other shareholders. The practical problem is that you may not actually know your and your partner's total taxable income for the tax year, when we are only part way through the tax year. For example, you may cease trading on say 30 September 2018, which is half way through the 2018/19 tax year. We will need to estimate total gross income from all sources for the remaining 6 months to 5 April 2019 in order to calculate the optimum level of dividends.

Strictly, the dividends need to be paid before the date of cessation of trade.

b) Overdrawn Director's Current Account

HMRC has started to attack overdrawn director's accounts as at the cessation date of trade. An overdrawn account would arise because your actual drawings have exceeded the available post-tax profits or have exceeded the dividends reported on your tax returns.

Adverse tax implications of your director's account going overdrawn:

(i) The first tax implication is a personal tax benefit on receiving an interest free loan from the company. However, the personal tax payable on the benefit is relatively small. Moreover, you can avoid the personal tax completely by paying interest on the loan at HMRC's official rate to the company.

(ii) The second implication is that the company can end up paying tax over to HMRC equal to 32.5% of the overdrawn director's balance, if the director does not repay the loan in full within nine months of the final accounting period end. Provided we (where assets are less than £25K) or the liquidator (where assets are more than £25K) can make capital distributions (see 2. below) within nine months of the year end, this will not be a problem. This timescale is normally always achievable.

(iii)HMRC is now looking to reclassify any overdrawn director's balance at the date cessation of trade as income/dividend, not capital. This means such overdrawn amount could be subject to tax at 32.5% or even 38.1%, rather than a maximum of 10%.

c) Company Pension Contribution

Payment of a company pension contribution on behalf of the director and partner/spouse would be a good way of saving corporation tax at 19% on the pension amount paid. It could also help to get the net assets of the company below £25,000 which means the process costs you less – as outlined in section 7. Our costs of dealing with everything are considerably cheaper than having to pay a formal liquidator. ***NOTE - any pension contribution will need to be paid before the date the company officially ceases to trade.***

We strongly recommend a meeting with Zac my IFA partner before making a pensions contribution to identify whether this is a good thing to do in your particular circumstances.

This is also an ideal time to speak to Zac about the possible ways of investing the money extracted from the company or simply to take stock to identify your overall financial plans and goals for the future. Do contact me to set up a free meeting or perhaps a conference call with myself and Zac to chat what it is you are looking to achieve financially in the next phase of your life.

2. Taking the remaining assets of the company out as capital rather than income

The assets which remain after a pre-cessation pension contributions and /or dividends have been paid, are treated as capital distributions in a winding up, not as income. The assets will be the net assets as shown by the Balance Sheet in the final set of accounts which we produce up to the date of cessation of trade. When a company is wound up, the assets are effectively treated as buying back the shares from the shareholders. The shareholders are thus selling/disposing of their shares. The net assets of the company per the final balance sheet will be the sale proceeds for your shares and the base cost will be the price you originally paid for the shares (normally £1 per share). The difference between these two figures is a capital gain/capital distribution.

Treating the money distributed to the shareholders as capital and not income has the following tax advantages:

a) Each shareholder is entitled to a capital gains tax (CGT) annual exemption. For 2018/19, this exemption is £11,700. This is the amount of gains that can be made in the tax year free of any tax.

b) Provided the company is essentially trading rather than investing, the CCT rate of tax will automatically be 10% whatever the level of gain rather than 10% or more likely 20% (depending on whether that part of the gain, when added to your total taxable income in the year, pushes the total above £34,500 or falls below this figure). This 10% rate of CGT is because of the availability of Entrepreneur's Relief (ER). A company is trading if its activities "do not include to a **substantial extent** activities other than trading activities". HMRC interpret "substantial extent" to mean not more than 20%. In practice, HMRC apply this 20% test to:
   - Income
   - Assets
   - Profit; and /or
   - Time Spent

   In other words, there can be investment activities (e.g. surplus bank accounts or say investments in stocks and shares) BUT ideally such amounts should not exceed 20% of any of the above measures. If they do exceed 20% of any one of these measures, HMRC should consider the overall picture rather that focus exclusively on just one measure. However, there have not been many tax cases in the Courts to assist our understanding of exactly where the line in the ground lies.

   E R relief is all or nothing. If the company is not substantially a trading company, you do not get the 10% rate of CGT on any of the gain.

   Other conditions to be met for ER and the 10% CGT rate to be available are that for a period of at least one year up to the cessation of trade:

   - You held the shares for at least 1 year (from April 2019 this is extended to 2 years)
   - You held at least 5% of the shares in the company; and
   - You were either an employee or officer (that is director or company secretary)
   - You don't start up a similar activity to what you have been doing in your current company for period of 2 years from the date of a distribution. If you do, the money distributed to you will be taxed as dividend income, not as capital – hence you won't get the benefit of the 10% low tax rate.

For disposals on or after 29 October 2018, you must have 5% of the voting rights, of entitlement to dividends and of entitlement to assets on a winding up or sale.

The specific shares being sold do not have to have been held for one year – substantial tax can be saved by transferring shares between spouses shortly before a winding up -BUT this must be done properly and we recommend you take specific advice before transferring shares to or from a spouse.

OTHER ISSUES AND MATTERS TO CONSIDER

3. **VAT De-Registration**
   If the business is registered for VAT, we need to complete a VAT de-registration form on your behalf around the time of the cessation of trade.

   The company will then need to complete a final VAT Return. On the final return, you will need to account for VAT on customers who have been invoiced but not yet paid the company. You may also need to account for VAT on the value of stocks or capital assets held at the date of cessation BUT only if the value of the stocks and capital assets exceeds £5,000 net of VAT. If you are using the Flat Rate Scheme, you will not be able to recover VAT on any final expenses/costs but if you are using the standard method for accounting for VAT you will.

4. **FORM DS01**
   Where the net assets of the company are below £25,000, we will also complete a form DS01. This is the official form advising Companies House that the company wishes to be struck off/dissolved. The form needs to be accompanied by a company cheque for £10 made payable to Companies House.

   Once the form is submitted to Companies House by us, Companies House must wait a minimum of 3 months before the company can be struck off. Upon receipt of the form Companies House puts a notice in the London Gazette advising of the submitted application to wind up. The 3-month interval allows any creditors to object to the winding up on the basis that they are owed money. In practice HMRC is the most likely creditor to object if any taxes (PAYE, VAT, Class 1A NIC or Corporation Tax) have not been paid.

   - Companies House sometimes strikes off a company exactly 3 months after the DS01 has been submitted. At this point, the company bank account will be frozen and you will not be able to recover any further amounts due to the company or extract balances in the bank accounts.

   - We then only have a maximum of two to three months in which to prepare the final company accounts to cessation of trade. If the final accounting period shows losses, we will need to carry back the losses to the previous accounting period and recover overpaid corporation tax. We will need to ensure the refunds are made to the company bank account before the company is struck off and the account frozen. ***Thus, you need to let us have the accounting records to date of cessation as soon as possible following the date of cessation of trade.***

   - **We strongly recommend that all debtor are collected in and creditors are paid as soon as possible after we submit form DS01.**

   - Until the corporation tax is paid, the company is unlikely to be struck off.

   - Although the corporation tax due on the profits from the last period of trading is not due until 9 months, plus one day following the final accounting period end,

we recommend that you pay the corporation tax due ***before*** the cessation date of trade or a soon as possible afterwards. HMRC has started to charge interest on corporation tax at 8% using statutory interest legislation/case law as a pretext for this. In the past, a company would only suffer interest at 3% and only from 9 months and a day from its period end.

5. Where a Liquidator has to be appointed – assets more than £25,000

a) A DS01 is not done by us where a liquidator is appointed. Instead the liquidator deals with the striking off process.

b) We have shown a list of possible liquidators and approximate price ranges in Section 6.

c) The liquidator is usually appointed as soon as we have prepared the final company accounts to cessation and all suppliers / creditors have been paid including HMRC.

d) The liquidator is unable to make a distribution within the first 35 days following appointment but can make a first interim distribution after this 35-day period.

e) The liquidator is unable to make the final distribution until they have received written confirmation from HMRC that HMRC believes all taxes have been paid and that none are outstanding. As a result of this, it can take several months and even on occasions a year or so before the final distribution is made to you and everything settled.

f) As accountants, we have to prepare and submit two sets of final accounts and CT600s, one for the final period to date of cessation of trade and another for the period from cessation of trade to the date the liquidator is appointed. We also have to prepare and submit a final VAT Return and de-register the business from VAT where relevant. We also liaise closely with the chosen liquidator so they are fully informed of submissions and any tax liabilities/repayments established by the final submissions.

6. Names of Liquidators and their approximate costs

Liquidator's Name	**Location**	**Contact Details**	**Price Range**
Clarke Bell Limited Katie Muir	Parsonage Chambers, 3 The Parsonage, Manchester M3 2HW	0161 907 4044 katiemuir@clarkebell.com	£1,850 Plus VAT
Turpin Barker & Armstrong James Patchett	Allen House 1 Westmead Road Sutton Surrey SM1 4LA	0208 661 7878 james.patchett@turpinba.co.uk	£3,500 - £3,950 plus VAT
Robert Stone	Sunrise House Newdigate Road Beare Green Dorking RH5 4QD	01306 713 172 Fax: 01306 713 378 rduncanstone@btconnect.com	£3,500 plus VAT, plus costs
Savants Business Recovery & Insolvency	3rd Floor Queensbury House, Brighton BN1 3XF	01273 862 413 adriand@savants.co.uk	From £1,750 plus VAT

7. **Accountancy Costs**
Our costs for dealing with specific matters relating to a winding up will range between £950 and £4,350 plus VAT. Our cost depends on a number of matters such as:

a) Whether the net assets are above or below £25K

b) Which liquidator is chosen. Whilst Clarke Bell are the cheapest, they expect us to do a lot of work to ensure that they simply have to distribute the balance of monies from the company after everything else has been dealt with. Overall, this is still the cheapest options for you.

c) The tax savings we can obtain for you. Invariably our own costs will represent no more than 15% maximum of your overall tax savings.

These costs are additional to any fixed price for dealing with the normal compliance matters of preparing the company accounts, company corporation tax return, P11Ds, Payroll, Company Secretarial etc.

We will try where possible to quote you a fixed fee in advance for your specific circumstances.

62 The Street Ashtead Surrey KT21 1AT
Tel: 01737 844322 Fax: 01737 844162 Email: david@dbeckman.com
This fact sheet is for information only. It provides an overview of the regulations currently in force and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore, no responsibility for loss occasioned by any person or refraining from action as a result of this material can be accepted by the authors or the firm.