
A VERY QUICK GUIDE TO MEMBERS VOLUNTARY LIQUIDATION

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WHY USE A MEMBERS VOLUNTARY LIQUIDATION?

This is a quick summary of the key reasons for using a Members Voluntary Liquidation. They are a very good tax saving opportunity. Do not forget that the tax law can always change, so those dormant companies that just try and drip out the remaining assets over a number of years may regret that decision.

The tax reasons and just 10% Capital Gains Tax. The main advantage to using a Members Voluntary Liquidation to wind up a limited company is the tax savings. Funds taken out of a limited company as dividends are taxable as income under various rates up to 38.1% whilst funds taken as capital will usually be as low as just 10%. You also get an annual Capital Gains Tax allowance per shareholder.

It ends contingent liabilities but be aware that you sign a statutory declaration that the company is solvent. Some directors, who have perhaps retired, like to see the company being liquidated and then struck off to be able to put a distance between themselves and any issues a company may have had in the past such as contingency claims on construction work.

However, be aware that to liquidate using a Members Voluntary Liquidation the directors must swear an oath called a statutory declaration of solvency and it is a criminal offence to do this knowing that the company is not actually solvent.

It brings a company to a neat end and no more Companies House filing deadlines. A Members Voluntary Liquidation is a very neat way to tidy up the affairs of a company when it is at the end of its economic life. It also means that there are no longer any filing requirements for the directors. All late filing penalties and deadlines end when a company is in Members Voluntary Liquidation. We have used this before to take the pressure off of a solvent company that was late filing its accounts.

It is a quick process and the bulk of it can be done in just seven days. There is work to be done before you can start a Members Voluntary Liquidation including simplifying the company's financial affairs as this will reduce the cost of liquidation. However, once the directors are ready to liquidate, we can prepare all of the paperwork that day and the company can go into liquidation immediately. We can then pay out the funds to the shareholders within the next few days (provided that we have cleared funds in) and certainly most shareholders will have had the majority of their money within a week.

THE TAX ISSUES TO CONSIDER ON A MEMBERS VOLUNTARY LIQUIDATION

You should always take tax advice from your accountants or advisors but here are some of the most important tax considerations.

What is Business Asset Disposal Relief formerly called Entrepreneur's Relief? This is a tax relief granted to individuals, so that they pay the lowest rate of Capital Gains Tax of 10% on asset sales, including shares in a qualifying trading company.

The company must have traded to qualify for Business Asset Disposal Relief ("BADR") and tax at 10%. To qualify the company must have been active in a trade or profession. Holding buy to let property would not count as trading but holiday letting normally would. Detailed guidance can be found on the HM Revenue and Customs website.

If the company does not qualify as having traded then Capital Gains Tax is normally due at 20%. This rate of tax may still be better than income tax on dividends.

The shareholder must be a working employee or director. This should be an easy test. An employee must have worked and put the hours in and been paid a wage or salary. A director should be registered as such at Companies House.

The shareholder must own at least 5% of the voting shares for the last 2 years. This is voting and ordinary shares in the company. They can include shares allocated under an Enterprise Management Incentive Scheme.

The lifetime tax limit of £1m per shareholder. This is quite a generous lifetime limit and applies to each individual.

Targeted Anti Avoidance Rules to consider from April 2016. These rules were brought in to stop a limited company being closed and liquidated for tax purposes with the same business being started again immediately. This included companies liquidated where the business then moved to a sole trade or partnership. There is a restriction on claiming BADR that you can not go back into the same business for two years.

Saving Capital Gains Tax by straddling two tax years. This is a useful way of saving a little more tax by using the Capital Gains Tax personal allowance as you get a new one every tax year.

Three years after trading has ceased. The company must go into liquidation and the assets should be distributed within three years of the date trading has ceased. Be aware that closing down and even a closing down sale for a trading company may not be classed as trading for tax purposes. It is always best to get on with the Members Voluntary Liquidation if you are going to do it.

WHAT TYPE OF COMPANY CAN MEMBERS VOLUNTARILY LIQUIDATE?

Quite often taxpayers have never heard of a Members Voluntary Liquidation and cannot quite believe it as they say it sounds too good to be true. Here are some of the issues to consider.

A limited company (trading or not). You can liquidate a limited company using a Members Voluntary Liquidation but not a partnership or sole trade. It is better if it was a trading business as the tax rate you pay on distribution of the shareholders' funds is less at 10%. If it was not trading, which usually means holding buy to let property, then the tax rate is higher at 20%. This is definitely an area to clarify with your accountants first.

The company must be solvent. A Members Voluntary Liquidation requires a majority of the directors to swear an oath that the company is solvent and able to pay all of its liabilities in full, with interest, within 12 months of the date of liquidation. If the directors knowingly make a false statement it is a criminal offence punishable by fine, prison or both.

Only used where the company assets are over £25,000. For assets of less than £25,000, by concession, HM Revenue and Customs allow you to dissolve the company and treat the pay out of funds as capital. There is no need to use a Members Voluntary Liquidation.

What happens to overdrawn Directors Loan Accounts? Overdrawn director's loan accounts create a tax charge if not repaid within nine months of a company year end. We recommend that all overdrawn director's loan accounts are repaid before the liquidation. There is a risk of HM Revenue and Customs treating a distribution in specie of an overdrawn loan account as income and not capital.

Freehold property – how do you get them out? Members Voluntary Liquidation can be used to transfer a property to the shareholders. However the shareholders, if more than one, may not want to own it together so it depends on the circumstances.

If there is no mortgage on the property it can usually be transferred to them without any stamp duty. This can be a substantial tax saving. It might be that if there are funds and property then shareholders can have a mix of different types of assets to balance things out. Be aware that property needs to be transferred at market value which usually means a good, independent valuation needs to be taken and that tax is due by the company on any gain or transfer. HM Revenue and Customs often review these transfers to make sure that the values used were accurate.

Other slow to realise assets such as disputed debtors. The best way to deal with these in a Members Voluntary Liquidation can be to assign them to one or more shareholders as a distribution in specie. We then give an authority letter saying the debt has been transferred.

How to deal with plant, machinery and equipment. There are a number of choices- the easiest is probably to get them valued and then let a shareholder or director buy them. Otherwise they can be sold quickly by auction.

You can also split one company into more than one using a Section 110 Scheme of Arrangement. It is worth mentioning this method which is often very useful for a second or third generation business such as farms. The family have different ideas of how the business should be run or run their own parts and it can be a good way of splitting the limited company up. This can be done with no tax of any kind including no stamp duty or Capital Gains Tax. We have just recently completed a £40 million-pound split of a farming and hotel business between family member shareholders.

GETTING READY TO LIQUIDATE

We try and work on a fixed fee basis for liquidation and have a proven track record and process to minimise the costs of a Members Voluntary Liquidation. To be ready to go into liquidation, here are some matters that should be considered.

- You cannot liquidate a company until you have ceased trading.
- It is always worth preparing the last year end accounts as soon as possible after ceasing to trade so that the Corporation Tax due is known (and change the year end to an earlier date if needed).
- Collect in any debtors if you can to simplify the liquidation and what we have to deal with.
- Sell any equipment, vehicles and other assets before we start the process even if this means a director or shareholder buying them at market value.
- Pay off any final creditors.
- Pay any final Corporation Tax due based on the cessation accounts.
- Make sure you know the financial position as you will have to swear an oath. The company must be solvent.



The Kirks team May 2018

WHAT IS THE PROCESS OF MEMBERS VOLUNTARY LIQUIDATION?

The first step is to contact us and ask any initial questions you have. We make sure your company and circumstances are suitable for a Members Voluntary Liquidation. We do not, however, advise you on the tax position. The process then is as follows.

- We give you a fixed fee quote so you know what it is going to cost. In some more complicated cases this may be variable based on the time we spend on a case (but that is unusual).
- We draft all of the paperwork ready for you to sign. This includes notices to shareholders and Companies House.
- You then swear an oath that the company is solvent and that you confirm all of the assets and liabilities. We draft this document for you and you swear it before a solicitor (usually a solicitor local to you can do this).
- You sign an indemnity – as we usually pay out the shareholders within seven days from the date of liquidation. This indemnity is effectively a guarantee that you will pay any money back if unknown creditors come forward.
- You transfer all of the funds to us the day before liquidation into a designated client account (that means a client account we open in your company name). We ask you to do this whilst you still have authority to do so with your bank. Once in liquidation your powers as a director will cease and it takes some time for the bank to accept us as the liquidator.
- Then the company goes into Members Voluntary Liquidation.
- We advertise the Members Voluntary Liquidation in the London Gazette and notify Companies House. All statutory filing requirements then end for the directors at that point.
- We take the shareholder bank details (and these are security checked) and then pay out the funds to shareholders and send them a letter stating the amount paid out and a figure to be declared on their next tax return. We usually hold back a small contingency fund just in case something small crops up but in the end this money, if not needed, goes back to shareholders.
- We will then sell any remaining assets or distribute these in specie depending on what has been agreed.
- If there is a freehold property to distribute we will appoint a solicitor, which can be your choice of whom, to transfer the property to the shareholders.
- We make sure that we pay any tax due on any asset sales.
- We then get tax clearance from HM Revenue and Customs and then close the case. This means paying out any final money and filing a closure report to Companies House so that the company is dissolved.

WHAT CAN GO WRONG?

Here are some issues that can cause problems and some suggestions of how to solve them.

If you can't pay everyone off in 12 months. At the start of the process the directors swear an oath that the company is solvent and can pay all of its creditors within 12 months of the date of liquidation. If it can't then the company should move to Creditors Voluntary Liquidation. This will substantially increase the costs and a new liquidator may be needed. The directors may have committed a criminal offence if they knew this was likely to happen (that not all creditors could be paid in full). It does not apply to payments to shareholders for their capital. If there are only a few creditors who will definitely be paid they may (with their consent) agree to an assignment to another party but that's unlikely.

If all of the shareholders can't be found. This has caused a problem for us on one or two cases when we have been unable to find all of the shareholders. Typically, this might happen with an older company where the shares have been inherited by various family members that cannot be tracked down. A possible solution is to deposit funds with a solicitor with their share to track them down. In the event of them not being found the funds will belong to the Crown.

Don't give away shares to your spouse just before a sale. You need to have owned the shares for one complete year and be an employee or director to qualify for BADR so do not fall into this common trap.

The tax clearance needed from HM Revenue and Customs is delayed. This can be a problem for us and shareholders. We can control anything within our office but we cannot set the timetable for HM Revenue and Customs and sometimes they are very careful checking every aspect of a tax payers affairs before they give out a tax refund. HM Revenue and Customs will also no longer talk to the director (as their authority ends on the date of liquidation). We recommend that shareholders do not rely on tax refunds coming by a certain date.

After dissolution another asset is found. This does happen, and strictly speaking, once dissolved the assets belong to the Crown (effectively HM Government). This is a reason why we do not close a case until we have had any tax or VAT refunded. It is, if necessary, possible to restore a liquidated company to the Companies House register on a Court application. It may be worth doing if the newly discovered asset is worth enough.

THE COST OF A MEMBERS VOLUNTARY LIQUIDATION

The simpler form the company can be in, the easier and cheaper it will be to liquidate. We work on a scale fee rate for Members Voluntary Liquidations.

Our fee scale

We try and keep it clear and simple. Of the last 65 cases we have dealt with in the last two years only one has been charged on the time spent basis as it was very complex and that was, of course, agreed in advance. Two others had a higher fixed fee as they involved foreign registered companies.

ASSETS	FIXED FEE
0 to £100,000	£1,500
£100,000 to £250,000	£2,000
£250,000 to £500,000	£2,500
£500,000 to £1 Million	£3,000
Above £1 Million	By Quote

The complications start to come (and we need to charge more) if the company owns property as this takes us longer to deal with, or if the company is not UK based. We can liquidate companies based in the British Virgin Islands for example – which are often used to own UK property.

Disbursements

We must pay out two costs as disbursements. These are an advert in the London Gazette which costs at present £299 plus vat and then a fee to an insurance company based on the value of the assets we handle. By law, every Licensed Insolvency Practitioner must pay this fee (called a bond) for every case.

If there is freehold property we will also need to instruct a solicitor.

WHY USE KIRKS?

- We work on a fixed fee basis in nearly all cases.
- We pay out the shareholders within seven days.
- We have liquidated 70 companies by Members Voluntary Liquidation in the last two years and distributed £50,000,000 to shareholders.
- Of these companies 68 were fixed fee quotes. How many did we charge more than the fixed fee on? None.
- Please take any tax advice from your accountant – we do not give tax advice.

The table below sets out the normal process of liquidation over 90 days to completion. Sometimes it does take longer to close the case but we still always pay the money out early on.



Notes

1. Reserves distributed by this process are usually capital not income.
2. We can split the distribution in step 5 into two tax years to make any use of allowances.

WHAT DO WE NEED FROM YOU?

- The Company name, registered number and trading address.
- The name and address for all shareholders.
- Certified identification for all shareholders.
- VAT number (if applicable).
- Tax reference and PAYE reference.
- Bank details for the company including address, sort code and account number.
- Details of where you would like the funds sent on liquidation
- The date on which the company ceased trading.
- An accurate list of all current company assets and liabilities.



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