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Get it right before you wind up your company

There comes a time when circumstances change and there maybe a number of reasons you want to close your company. You may have sold your business or a property and made a capital gain, or you may another reason for wanting to close the company.

We summarise the options available to companies wanting to close:

1. Failure to file an annual return. This is the easiest method to get the company removed from the Companies Office Register. However, this option is not recommended as company matters may not have been dealt with in a proper manner and could lead to the company being re-activated in the future and action taken against it.

2. Short form liquidation. This involves some paperwork and liaising with Inland Revenue to get approval to remove. Once all is in order, the Companies Office can be advised and the company removed from the Companies Office Register. This is often a cost-effective approach for many companies, however as it is not a full-blown liquidation, there may be circumstances where the company can be restored by claimants against the company.

3. Long form liquidation. This option involves appointment of a liquidator and is a much more costly process. It can take many months and involve numerous meetings between interested parties such as shareholders, company representatives and creditors. The advantage with this option is that it is much harder to restore the company once the liquidation is complete.

Important factors to consider that may impact the type of windup procedure:

1. Is the company solvent – can the company pay its debts as the fall due? The solvency of a company may impact who controls the liquidation process, the shareholders or the creditors.

2. Potential creditors or claims against the company, warranties provided by the company or other commercial decisions. These factors may determine if the company is required to undertake a full liquidation or if it can simply proceed with a short form liquidation.

3. Unintended tax consequences. There may be depreciation recovered or GST liabilities that need to be accounted for on windup.

4. Timing of transfers. Has a capital gain been taken out the company without first commencing the windup process? If yes, then shareholders may be deemed to have withdrawn the funds as loans and Fringe Benefit Tax interest will need to be charged on the loan balance. Tax will therefore be payable by the company on the interest income.

To ensure the windup of your company is as stress free as possible, please contact your Walker Wayland advisor in the first instance and we will be able to guide you through the process..

If you would like to know more or require assistance please contact Kirit or Alannah.

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