



# The CPD Fest 2020

## Ten Topical Tax Issues

### Presenter:

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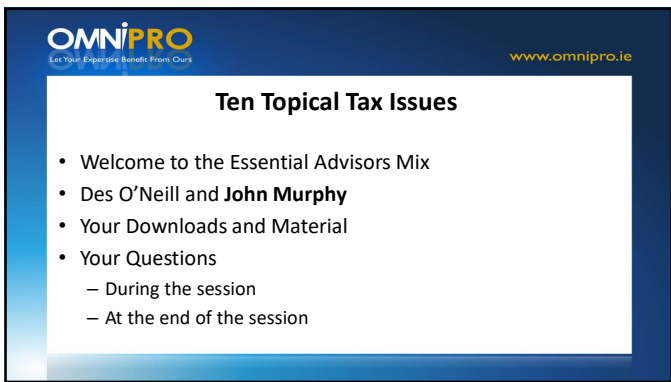
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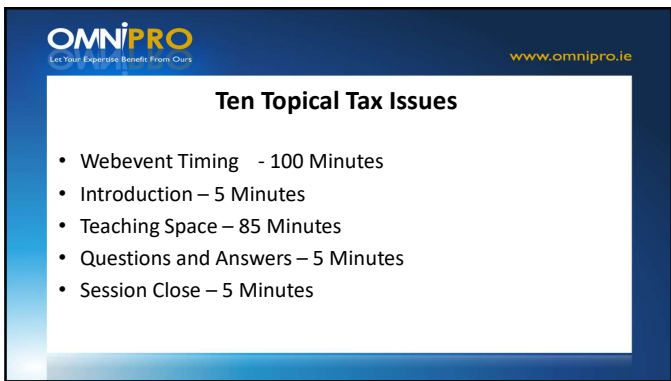
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### Ten Topical Tax Issues

- Topic 1 - Structuring termination payments for voluntary strike offs - how to document and cover off the fact the director must remain in situ until the application has been completed.
- Topic 2 - Close company professional surcharge - the relevance for accountants and other professional services.
- Topic 3 - For construction and developer clients, the importance of asking the correct questions to assess whether the corporation tax rate is really 12.5% and whether VAT is reclaimable on certain upgrades of second hand residential property. Also looking at the Forgotten Rule.

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### Ten Topical Tax Issues

- Topic 4 - Dividends paid between group companies. DWT and the importance of having procedures to ensure section 434(3a) election is completed to prevent close company surcharge issues in the recipient. What, why and how.
- Topic 5 - Members Voluntary Liquidations and Entrepreneurial Relief in a group situation
- Topic 6 - Share buyback with family restructuring - the unspoken CAT risk S.598 (Retirement Relief on transfers to 3<sup>rd</sup> parties) and S.599 (Retirement Relief transfers within the Family)

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### Ten Topical Tax Issues

- Topic 7 - How the tax valuation rules for shares can give different valuations for the three tax heads CAT, CGT and Stamp Duty. Another common forgotten rule that can have disastrous consequences.
- Topic 8 - RCT and the connected persons rule. The Get Out and the Double Check and a change in Revenue approach for companies taking over shareholder businesses?
- Topic 9 - The risks where proprietary directors of companies provide services through other companies owned by them and some Revenue challenges we are seeing in the area.

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### Ten Topical Tax Issues

- Topic 10 - Capital tax items and the creation of a group through a Share for Share Transaction. The potential impact on Business Asset Relief if a transfer happens within 5 years & preventing a clawback of Section 599 retirement relief.

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### 1 - Strike Off's and Ex-gratia Payments

- Ex-gratia payments – S201 – ex-gratia – ‘Office-holder’
- Minutes of meeting important
- “in recognition of past service the company are paying XX a termination package of €x,xxx. In order to proceed with the strike-off process the directors have agreed to remain on the Board solely for the purposing of meeting the legal requirements of the strike-off process.”
- Tax appeal case 129TACD2020

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### 2 - Close Company Surcharge

- S.440 – Close Co. Surcharge/S.441 Close Co. Professional Surcharge
- What is a profession in my mind – 3 elements
- Recent activity - Case 108TACD2020 – Accountancy practice
- S.441(2) – Principal part - test

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### 2 - Close Company Surcharge

- S.440 – Surcharge limited to distributable reserves at year end (s.440(2) TCA)
- Section 434(7) – If after year end – no distributable reserves – then precluded from Co. law from paying it – BUT!!
  - Could be relevant in current environment
- Use Section 434(3A) to avoid surcharge in top Co. – How it works (discuss later)

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### 2 - Close Company Surcharge

- Where loss in trade & rental income
- Can set loss on value basis against rental income for CT purposes
- BUT for surcharge purposes S.434(4)(5) – it is after deduction of current year losses – Formula takes Income for year \* A/B
  - E.g. trade loss of €120k and rental profit of €70k. In this case there is no surcharge as overall loss of (50k) \* (70k/70k (income before taking account of losses))
- S.434(5A) – Estate and investment income after deduction of tax which payable if tax were computed on income – In this case if the case loss was only €30k, the deduction would be €70k\*25% not the amount after loss relief of 13.75k
- Revenues view – Surcharge based on rental income before CA's

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### 3 - Construction/Developer – VAT/CT rate

- Ask client the right Questions
- For Developer/construction Co. – Is the profit taxable at 12.5% of 25% as excepted trade
  - Undeveloped land/building – 25%
  - Watch finishing ghost estates or buying and doing up the houses – S.21A TCA - word 'by or for'

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### 3 - Construction/Developer – VAT/CT rate

- VAT on Property where old property refurbished;
- Old Residential Property – No option to tax the letting here as will be used for residential purposes & purchaser live in it
- As no vat charged assuming not making it new – No entitlement to reclaim the VAT on costs of refurbishment unless back up to show 25% test is exceeded;
- Usually better not to anyway – Want to keep it out of the VAT net – if not 13.5% kept out of vat net
- Only new if cost of development >25% of sales price or materially altered
- Only exception here is where new property & rented out but intention always to sell

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### 4 - Payment of Dividends Between Co.'s

- Dividend between non-payment Group Co's
  - Don't forget to have Form V3 completed before payment – Implications if not!!!
  - Renew every 5 years
  - No need for Form V% where payment between payment groups
- Avoiding the surcharge – Section 434(3A) election by parties
  - Have this election on a corporation tax checklist
  - If it is missed what are the implications – Case 129TACD2020

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### 5 - MVL's and Entrepreneurial Relief

- The importance of timing – MVL's and ER
- Entrepreneurial relief and it application to groups;
- Possibility to claim ER in a Group situation where MVL happens
  - Liquidator appointed over hold Co. & distribute shares in Sub Co. in specie
  - ER applies on distribution
  - Shareholder now has high base cost on disposal of Trade Sub

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### 6 - Share Buyback – The Risk

- Certain revenue officials approach where transfer to child & then buyback;
- Cash for buyback dilutes business asset relief on initial transfer to son;
- Laughable really as to get CGT treatment cash needed – but the risk does exist here – Be aware;
- Watch this space – revenue contending Buyback in a Case II trade cannot get CGT treatment – not a ‘Trade’

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### 7 - Valuation of Shares & Connected parties

- Valuations – different rules for CGT, CAT and SD purposes
- Shareholder A & B are husband and wife who owned Co. A 50/50. They gifted 20% of the company to each of their five children. The market value of 100% of this Co. was €200,000. The market value of the shares under the various taxes are as follows:
- CAT = €20k ( $€200k * 10\%$ )
  - Section 27 CATCA – family company – No minority discount

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### 7- Valuation of Shares & Connected parties

- CGT = €9k -  $€200k * 10\% * 45\%$  (applying minority discount of 55% based on 20% holding)
  - Section 550 TCA 1997 – series of transaction with connected persons
- Stamp Duty = €7k -  $(€200k * 10\% * 35\%)$  (applying minority discount 65% based on 10% holding)
  - No family based restriction
- NB= always consider what percentage being valued & who seller is
- Note in future - base cost for the shares for the child for CGT purposes is €9,000.

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### 8 - RCT & Connected Persons

- The Get Out – Make sure it applies
- RCT considerations – Connected persons –S.10 TCA – Groups and directors/shareholders with Controlling interest
- Own use exemption for connected persons = S.530A(3) TCA;
- Rental property – apply concession for €20k per property where minor repairs & for Companies – Need for records here

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### 8 - RCT & Connected Persons

- RCT and first years of incorporation after transfer from sole trader;
- Revenue applying 20% RCT withholding – Not taking account of time when operated as sole trader
- Not using discretion as permitted by Section 530G(3) to disapply 530G(1)
  - Discretion noted in Tax & duty manual Part 18-02-05
  - If arguing case refer to Tax appeal case 77TACD2020
- Be aware of this as it will impact cash flows

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### 9 - Proprietary Directors Providing Services to other Co's

- What are seeing in certain cases with revenue
- Applying PAYE/PRSI on payments made by a Co. to a Co. owned by Director – deeming Contract of service applies - Consultants;
- Going to appeal & some have agreed settlement;
- Mitigation steps:
  - Have minutes of AGM in place noting no directors remuneration for directors services

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**9 - Proprietary Directors Providing Services to other Co's**

- Mitigation steps:
  - Have minutes of AGM on directors fees
  - Have good contracts – If poorly worded – easy for revenue
  - Have structure for fees / have other clients
- If revenue still pushing mitigate/settle
  - No loss of revenue if PAYE paid out of other Co. – will reclaim refund in that Co.
  - Only works if recharge is similar to wage charge;
  - Look for CT refund for change in profits

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**9 - Proprietary Directors Providing Services to other Co's**

- Standard Contract of vs for services
- Degree of control, integration, ability to substitute, ability to get expenses in that Co.,

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**10 Capital Taxes - Reminders**

- Prevent a clawback of Section 599 retirement relief
  - Case 140TAC2020 where clawback on child – disposal within 6 years
  - Prior to future disposal – ensure conditions not met
- Creation of a group – is sold within 5 years – S94&95 CATCA – replacement assets here

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- We find the best solution for accountants in any given situation

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# Company Tax Planning Opportunity Checklist

## Tax Planning Opportunity Checklist

Client:

No.	Details	Comment
	<b>General Information</b>	
1.	What is the director's and shareholder's date of birth?	
2.	Is the shareholder married?	
3.	<p>Does the shareholder work in the company?</p> <p>Does the Company carry on a trade?</p> <p><i>Retirement relief</i></p> <p>€750,000 (if under 66 years of age) and €500,000 (if 66 years or above) in proceeds can be received tax free where a sale is to third parties. For transfers to children, there is no limit up to the age of 66 years and once 66 years or over there is a cap of €3 million on the relief.</p> <p>Has the shareholder owned the shares for at least 10 years up to the current date and has he/she been a director of the company for at least 10 years, 5 years of which was full time director?</p> <p>Does the shareholder own at least 25% of the voting share capital?</p> <p>Does the shareholder own 10% of the voting shares and together with his/her other family members own 75% of the voting power?</p> <p>Is the shareholder 55 years or more? (there is a concession for retirement relief if they are 54 and sick)</p> <p>Is the company a wholly or mainly trading company?</p> <p>If the answer to the above questions is yes, then it is likely retirement relief can be claimed on any disposal of shares in the company or shares in a group where 75% or more is owned within the group.</p> <p>Has the shareholder disposed of any of the qualifying shares prior to this date to either children or third parties or have they transferred shares to a spouse since reaching the age of 55?</p> <p><i>Entrepreneurial relief</i></p> <p>Relief allows the first €1 million of a chargeable gain to be taxed at 10%</p>	

	<p>Has the shareholder owned the shares for a continuous period of 3 years in the 5 years up to the date of disposal and have they been an employee of the company for not less than 50% of his or her time in the service of the company or companies in a managerial or technical capacity?</p> <p><b>From 01/01/2021 – the ownership period is updated to any continuous period of 3 years prior to disposal.</b></p> <p>Does the shareholder own at least 5% of the ordinary share capital? See point 29 of checklist</p> <p>Is the company/group a wholly or mainly trading company?</p> <p>If the answer to the above questions is yes, then it is likely entrepreneurial relief can be claimed on any disposal of shares in the company or shares in a group where more than 51% or more is owned within the group and they are trading companies. See point 19 of checklist</p>	
4.	<p>Is the company considered to be a wholly or mainly trading company over the last 10 years (retirement relief) or the last 3 years (entrepreneurial relief), Share buyback (5 years) &amp; S.626B (Participation relief- 12 months)?</p> <p>If not - then this will impact on any CGT reliefs as the relief will not apply</p>	
5.	<p>Do children of the shareholders work in the company?</p>	
6.	<p>Does a favourite niece or nephew work in the company?</p>	
7.	<p>What are the future plans for the company?</p> <p>Is the shareholder interested in a sale to a third party?</p> <p>OR</p> <p>Is the shareholder interested in transferring ownership to children?</p>	
8.	<p>Does the shareholder own other companies? If so, do we need to ensure they meet the working time test in one of these companies – if so ensure we have proof as to where they are working if a future claim is to be made for relief. If more than 3 companies and not in a group – then need to decide which ones you want to get entrepreneurial relief on</p>	
9.	<p>Does the shareholders spouse/civil partner work in the business and is he/she a director? If they do, are they a director – if not, consider appointing if they meet other conditions for retirement relief.</p>	
10.	<p>Succession planning should be carried out before the age of 66 as retirement relief threshold reduces to €500,000 after that time for sales to third parties and reduces to €3 million for transfers to children.</p> <p>If may be possible to transfer value without transferring control (See point 41 below)</p>	

11.	From a review of the accounts is the director being paid a market rate?	
	If the director is considering exiting in the next 3 to 4 years, it may make sense to increase the salary to allow for a higher ex-gratia payment on exit.	
<b>Review of the Profit and Loss Account</b>		
12.	Is the company making the most of pension contributions to directors/shareholders?	
13.	Is the company making the most of the €500 tax free voucher to employees? <i>As a result of the Covid 19 crisis, for the 2020 period Revenue have concessionally waived the requirement that only one voucher issues. 2 vouchers may be issued in 2020 (max tax free amount remains at €500).</i>	
14.	Is the company in a tax group? If so if losses are made in one company, has the company availed of group loss relief?  Do the shareholders own other companies (which are currently making losses) – if so, would it make sense to create a group structure so that the losses can be set against the profits of this company?	
15.	Can the company avail of the option to account for VAT on a cash receipts basis?	
<b>Balance Sheet</b>		
<i>Tangible Fixed assets</i>		
16.	Has a detailed review been carried out on fixed asset additions to ensure that all available capital allowance claims have been made?  Has a review been carried out to identify if assets are put into use in order to be able to claim capital allowances?	



<p>17.</p>	<p>Does the company/group hold any non-trade assets (e.g. investment property, listed shares)?</p> <p>If so, this may impact on reliefs such as retirement relief – it dilutes the relief available.</p> <p>If so, this may impact on entrepreneurial relief – However, if the value of the property is &lt;50% of the value of the company when taken with all other non-qualifying assets, then the relief is not diluted. That said in a group situation, where the property is owned by a subsidiary, entrepreneurial relief cannot apply.</p> <p>If the intention is to transfer ownership to the shareholders children during their lifetime, then such assets will dilute Business Asset relief under Section 90 of CATCA 2003</p> <p>One way to prevent the dilution may be to:</p> <ul style="list-style-type: none"> <li>- for entrepreneurial relief - transfer the property to the holding company – then need to assess if the non-qualifying</li> </ul>	
	<ul style="list-style-type: none"> <li>- assets are greater than 50% of value of the group (other exceptions as detailed in point 19 below);</li> <li>- sell the non-trade chargeable assets;</li> <li>- engage in some planning. If the shareholders do not wish to transfer non-trade assets or its diluting the relief, it may be worth restructuring by engaging in a share for undertaking – 3 party swap whereby the trade, trade cash, asset and liabilities are transferred out to a new Company (owned by the existing shareholders in the original company) and the excess cash or non-trade assets are left behind in the existing Company.</li> <li>- As a result, when the New Company is sold or transferred to children, Business asset relief will not be diluted, nor will retirement relief or entrepreneurial relief as applicable.</li> </ul>	
<p>18.</p>	<p>Has the company acquired intangible assets?</p> <p>If so, is it possible to claim capital allowances on these specified intangibles under Section 291A TCA 1997?</p>	

19.	<p>If the shareholder is interested in claiming entrepreneurial relief, assess if the company holds investments in trading companies where &lt;51% of the share capital is owned within the group?</p> <p>If there is, then this may impact on the ability to claim entrepreneurial relief if those investments together with other non-qualifying assets make up more than 50% of the value of the company?</p> <p>If they do, consider restructuring; One way to prevent the dilution may be to engage in some planning whereby the investments are sold prior to the sale/transfer, or it may be worth restructuring by engaging in a share for undertaking – 3 party swap whereby the trade, trade cash, asset and liabilities are transferred out to a new company (owned by the existing shareholders in the original company) and the excess cash or non-trade/qualifying assets are left behind in the existing company (alternatively assess if &gt;51% can be acquired prior to disposal).</p> <p>Does the company hold a dormant company in the group? If they do then ensure that the dormant company is voluntarily struck off or liquidated prior to any claim for entrepreneurial relief. However, if there is a claim for retirement relief it may be beneficial to let the dormant company remain in order to ensure that the reliefs are not utilised at the same times.</p> <p>In a group situation, where an investment property is held in a subsidiary, make sure and transfer this to the top parent company prior to any sale or transfer or alternatively sell it so that the entrepreneurial relief conditions can be met.</p>	
	<b><i>Stocks/Inventory</i></b>	
20.	Where stock exists on the balance sheet, has the client carried out a sufficiently strong review of the stock listing to identify stock provisions (to get the benefit of the tax deduction)?	
	<b><i>Debtors</i></b>	
21.	Has a detailed review been carried out on bad debt provisions (to get the benefit of the tax deduction where they are considered bad)?	

22.	<p>Are there any debtor balances which are not-considered trade balances?</p> <p>If so, this may impact on reliefs such as entrepreneurial and Business Asset relief</p> <p>One way to prevent the dilution may be to:</p> <ul style="list-style-type: none"> <li>- ensure it is paid pre-transfer/sale and that the cash is invested in trade assets at the date of the transfer;</li> <li>- engage in some planning. If the shareholders do not wish to transfer excess cash or non-trade assets, it may be worth restructuring by engaging in a share for undertaking – 3 party swap whereby the trade, trade cash, assets and liabilities are transferred out to a new company (owned by the existing shareholders in the original company) and the excess cash or non-trade assets are left behind in the existing company. As a result, when the new company is sold or transferred to children, Business asset relief will not be diluted, nor will retirement relief or entrepreneurial relief as applicable.</li> </ul>	
<b><i>Cash at bank and on hand</i></b>		
23.	<p>Does the company have excess cash or will it in the future or does the client want to invest the excess cash in other investments/property?</p> <p>If the company is not in a group, it may make sense to create a group by way of a share for share exchange – this will ensure any excess cash or surplus profits can be dividend-ed up to the new parent company and therefore out of reach of creditors in the trading company. From there, further investment can be made. It is possible to avoid any close company surcharge on the receipt of the dividend to new parent company.</p> <p>If the shareholders believe a sale of the trading company may be possible in the future, it may be good to hold on to at least 5% of the shares personally in the trading company (that way part of the proceeds will be obtained directly in the shareholders hand and the remainder will go to the new parent company tax free).</p>	
	<p>The creation of a group will also give the possibility for the new parent company to sell the trading subsidiary (assuming it does not derive the greater part of its value from land or buildings in the state) tax free in the future by utilising Section 626B of TCA 1997 (Participation relief). The proceeds from the sale could then be used to invest in something else in the future.</p>	
24.	<p>Excess cash which is not utilised as part of the succession plan can have an impact on entrepreneurial relief,</p>	

25.	<p>Does the company hold excess cash? If so - consider the impact of this on reliefs</p> <ul style="list-style-type: none"> <li>- Retirement reliefs – Any chargeable non-trade assets will dilute this relief (if there are no chargeable assets in existence revenue may contend that excess cash will dilute the relief);</li> <li>- Entrepreneurial relief – if the value of investments and other non-trade items including excess cash are greater than 50% of the value of the company then entrepreneurial relief will not apply.</li> <li>- Business asset relief (to reduce gift tax)- ineligible assets do not qualify for relief so relief is diluted and will not apply at all where the value of the business is more than 50% attributable to these ineligible assets.</li> </ul> <p>Is it possible to do some planning to ensure that this does not cause issues? Examples include:</p> <ul style="list-style-type: none"> <li>- Paying out cash in a tax efficient manner (e.g. pensions, ex-gratia payments);</li> <li>- Arranging for it to be utilised by way of share buyback (at the time of writing some revenue officials are taking the view that any cash used to buyback shares is excess cash so if at the time of the transfer of a portion of the shares to the child this will then dilute business asset relief);</li> <li>- Purchasing trade assets;</li> </ul> <p>If the shareholders do not wish to transfer excess cash or non-trade assets or they want to ensure the relief applies, it may be worth restructuring by engaging in a share for undertaking – 3 party swap whereby the trade, trade cash, asset and liabilities are transferred out to a new company (owned by the existing shareholders in the original company) and the excess cash or non-trade assets are left behind in the existing company.</p> <p>As a result, when the new company is sold or transferred to children, Business Asset relief will not be diluted, nor will retirement relief or entrepreneurial relief as applicable.</p>	
26.	Does the company hold cash in a foreign currency account? If so, this may impact reliefs	
	<b><i>Share capital</i></b>	
27.	<p>Does the company have a large share capital (ordinary share capital, share premium, capital redemption reserve) but not significant distributable reserves and does the company require reserves in order to pay a dividend etc. etc.?</p> <p>If so, consider carrying out a summary approval procedure under Section 204 Companies Act 2014 to reduce the share/company capital which will then create a distributable reserve to allow future dividends.</p>	

28.	<p>Does the company have key employees that it wants to retain?</p> <p>If so, assess if it would be worthwhile to issue:</p> <ul style="list-style-type: none"> <li>- growth shares to these employees whereby they benefit from the future increase in value from that date; or</li> <li>- clog shares whereby shares are issued at market value but a discount of up to 60% is applied to the value of the shares in order to reduce income tax on the issuance of the shares.</li> </ul>	
29.	<p>Are there different classes of ordinary share capital which jeopardises the 5% ordinary share capital holding requirement (can arise where EIS shares have been issued or ordinary shares which only have right to dividend if they are issued for a significant amount such that the main shareholders hold &lt;5% of the nominal share capital). Ordinary share capital is defined as every class of share capital other than capital with a fixed rate of dividend.</p> <p>Possible to undertake a share restructuring so that the 5% condition can be met.</p>	
30.	<p>Are there distributable reserves available to allow a share buyback (assuming the CGT treatment in Section 176 to 186 TCA 1997 applies)?</p> <p>Have the shares been held by the person at least 5 years prior to the buyback? If not the CGT treatment will not apply</p> <p>Is the intention to transfer ownership to the shareholders children?</p> <p>If so, it may be possible to structure the exit from the business by way of a transfer of an element of the shares to the children first and then the buyback of the remaining shares by the company. Note: at the time of writing some revenue officials are taking the view that any cash used to buyback shares is excess cash so, where a transfer of a part of the shares to the children occurs just prior to the buyback of the remainder from the parents, revenue are contending that the excess cash for the buyback dilutes business asset relief on the transfer of the shares to the child;</p> <p>There are provisions which state where the parent is 66 years of age or more and there is a transfer of shares to the child and then a sale of shares to a company controlled by the child (or vice versa), that you must combine the value of both transactions to see if the €750k/€500k threshold for retirement relief is exceeded. Some practitioners believe this catches transfers to children and then a share buyback. We believe the wording in the legislation may not catch this, but it is something to be aware of. It obviously has no impact if the value of the two transactions is below the threshold when added with other disposals.</p>	
31.	<p>Is a management buyout proposed?</p> <p>If so, does the MBO team have cash or can they get access to borrowing to meet an upfront payment so as to reduce the risk of Section 135(3A) TCA being invoked?</p> <p>If not is it possible to go down the share buyback route?</p>	

32.	<p>Does the company have different shareholders with different requirements for cash – with one party not wanting to take the money out of the company and get taxed on it at marginal reliefs and the other does as they require the cash?</p> <p>If so, would it make sense to create personal holding companies by carrying out a restructuring of shares?</p>	
33.	<p>Is the company a property holding Company?</p> <p>If so, it may be good to create a holding company to protect excess cash and to allow for investments in other assets outside of that company. It may be possible to avoid any close company surcharge on the receipt of the dividend to new parent company and a surcharge in the subsidiary company.</p>	
<b>Other items</b>		
34.	<p>Is the client considering selling the company in the future?</p> <p>If so, it is worthwhile doing a share for undertaking restructure (three party swap) to create a new company which will be more attractive to potential purchasers?</p> <p>The ownership period etc. will carry over to the new company such that reliefs can continue.</p>	
35.	<p>Does the company have two separate trades in the same company? Would it be better to create a holding company and then transfer one trade into another subsidiary or transfer out one trade into another company owned by the existing shareholders in a share for undertaking?</p> <p>That way one company could be sold if that is what the shareholders wished or alternatively it de-risks both trades such that If one gets into trouble then the other one is not affected.?</p>	
36.	<p>If there are non-trade assets which will jeopardise retirement relief, entrepreneurial relief and business relief, consider disposing of these assets prior to disposal/transfer.</p>	
37.	<p>Is it possible to structure a succession plan or sale in way that entrepreneurial relief and retirement relief will not be triggered at the same time (e.g. part sale before 55 years of age and part sale afterwards or not owning the requisite number of shares in order to claim retirement relief?)</p>	
38.	<p>Does the shareholder's spouse/civil partner work in the business and are they a director? If so, does it make sense to transfer some shareholding over before the shareholder reaches 55 years of age. May be worthwhile if the company is likely to be worth more than €750,000. If the transfer is after 55 years if may make sense not to do this as it will utilize some of the retirement relief threshold so be careful before a decision is made.</p>	

39.	Does the shareholders own property where the CGT exemption relief applies (if acquired between 7 December 2011 and 31 December 2014). If so, would it make sense to sell this property into the company in order to crystallise the exempt gain?	
	It is important to consider stamp duty cost and the implications from a VAT perspective.	
40.	<p>Does the shareholder give the company use of land and buildings?</p> <p>If so, it may be possible to claim retirement relief if it is transferred to the same person at the same time as the shares are transferred.</p> <p>For Business Asset relief, if there are part transfers ensure that &gt;50% of the voting rights are held by the disponer in order for Business Asset relief to apply on this property.</p>	
41.	<p>Does the shareholder wish to transfer the ownership to the children but be able to maintain control of the company?</p> <p>If so, a share restructuring could be carried out to ensure the parent(s) has the power to appoint and remove the board of directors or alternatively retain only voting right shares (i.e. two classes of shares – one that hold voting rights and the other class of share that holds every other right).</p>	
42.	If a plan is to be put in place for a children’s company to purchase the shares from a parent, be conscious of the anti-avoidance legislation in retirement relief legislation as well considering Section 135(3A) issues with regard to funding as if the funds are obtained directly or indirectly from the target company then the proceeds on the sale of the shares by the parent could be liable to income tax and not CGT	

## Corporate Restructuring Checklist

### Appendix I

#### **CGT tax relief and conditions to be complied within a group reorganisation/creation of a group/share for undertaking**

#### **CGT relief for the transferor in a three party swap – where it is not between a 75% or more Group company initially**

Capital gains tax relief for **transferor** in a share for undertaking arrangement (three party swap)

- CGT relief obtained for the disposing company under S.615 TCA 1997
- Ensures - no gain/no loss for the company and the base cost is transferred.

S.615 conditions to be applied for the relief to be availed of are:

- The transfer is part of an amalgamation/reconstruction
- The transferor and transferee are resident in Ireland or the assets are chargeable assets immediately before and after the transfer;
- The transferor receives no consideration other than the assumption of its liabilities.
- Clawback – no clawbacks if undertaking/shares disposed of afterwards.

#### **CGT relief for the transferor in a three party swap – where a 75% Group relationship exists**

CGT relief obtained for the disposing company under S.617 TCA 1997 (CGT group relief available where 75% ownership)-

- Ensures no gain/no loss for the company and the base cost is transferred to group company.

#### **Watch clawback under Section 623 TCA 1997 if asset is disposed of within 10 years of transfer and the company leaves the group with the asset. – S.626B TCA 1997 might prevent this if it relates to shares.**

If the acquiring company leaves the group within 10 years of the transfer by deeming the acquiring Co. to have disposed of the asset at market value at the date of the original transfer to the other group company (S.623 TCA 1997). Note where S.626B applies at the date of the first transfer then the clawback is prevented as S.626B relief will apply as the company that received the shares can attribute the period of ownership held by the other group companies as being that entities period of ownership.

#### **CGT relief for the shareholders in a two or three way swap**

CGT relief for shareholder (individual or company) in a two way swap (two party swap) under S.584 TCA 1997 & S.586 or in a three way swap (i.e. share for undertaking) under S.587 in a such that the base cost of the shares moves over. To avail of this relief the company:

- issuing shares has or in, consequence of the exchange will have control of the other company (applies where obtaining a minority interest also); or



- it issues shares as the result of a general offer made to the members of the other company, which is conditional that if the offer is accepted by the members of the other company, that the acquiring company may have control of the other company; and it must be carried out for bona fide reasons

In order for the stamp duty relief to apply the shareholders of the disposing company must have the same ownership in the new company.

- Possible for the offer to be made unconditional if the original offer was conditional but all the parties did not accept this original offer
- Must effect the transaction not for the sole/main purpose of avoiding tax

## Appendix II

### Share for share/undertaking –three way swap – Section 80 conditions – Stamp duty

Share for share/undertaking –three way swap -Section 80 relief applies where all of the following exists (**needs to be formally claimed on ROS –self assessment**):

- Assets transferred constitute an 'undertaking' or part of an 'undertaking'
- Consideration for the acquisition must consist of not less than 90% in the issue of shares in the acquiring co.
- Must acquire 90% or more of the issued share capital of the target company or the undertaking or part of the undertaking of target co.
- Done for bona fide commercial reasons and not done for the main (or one of) purpose of avoiding tax and will be on such terms that will ensure substantial continuity of ownership
- Acquiring company required to remain the beneficial owner of the shares in the target company for a period of two years following the transfer. Note no such clawback where it is disposed as a result of another reorganisation/reconstruction or of a bona-fide liquidation.
- No requirement for shareholder who are issued shares to keep ownership of those shares for any set period.
- Requirement that the Constitution of acquiring Co. specifically states that one of its objects was to acquire the undertaking/shares of target co (relevant for DAC's) or the authorised share capital is increased for the sole purpose of acquiring the undertaking (applicable for LTD' as such a company is not required to have an objects). If the Ltd is not newly incorporated as part of the transaction, then the increase in issued share capital is enough to prove that it was increased for the acquisition of the company (the minutes of the meeting should evidence this).

### **Appendix III**

#### **Share for share—two way swap – Section 79 conditions – Stamp duty**

The requirements for Section 79 of SDCA 1999;

- Applies to transfers of assets and property including shares within a group. It does not need to be an undertaking.
- The transferor and transferee companies must be at least 90% associated (i.e. 90% issued share capital, 90% of proceeds available for distribution and 90% assets on a winding up).
- Relief clawed back if the transferor and transferee cease to be associated including by way of liquidation within a two year period of the transaction. Note Section 66 of FA 2017 makes it clear where there is a bona fide liquidation within 2 years of the transaction, then the clawback does not apply as long as the entity that receives it holds on to it for 2 years and the ownership remains unchanged.

If a merger occurs which breaks the relationship, then Section 66 of the Finance Act 2017 confirms where a company acquires assets/shares of another company, where both companies are part of the same group, then Section 79 SDCA 1999 relief applies, notwithstanding that the company that transferred the assets is dissolved following the merger and they are not associated for two years following the transfer. However the successor is required to hold onto the asset that transferred for two years which differs to what we are used to and the ownership of the ordinary share capital of the transferee must remain unchanged. It is very important that these two points are remembered when doing mergers.

## Appendix IV

### Company secretarial requirements for a share for share transaction – two party swap:

1. Board meeting held by acquirer to detail:
  - Purpose of meeting referring to possible take over;
  - Note that the transfer would constitute substantial property transaction under S.238(1)(b)
  - Pass the required resolutions (as detailed below)
  - Agree to issue letter of offer to shareholders (conditional on gaining control)
2. Acquiring company passes a special resolution to (and file Form G1 with CRO):
  - increase the authorised share capital of the Co. to allow the acquisition of the shares in target co. (as required by Section 80 & 79 SDCA where undertaking is transferred) or to include a new objects that being to acquire the company (option only applicable to DAC's)
  - give power to the directors to allot shares (if applicable)
  - approve the amended Constitution
3. Acquiring company makes a letter of offer to the shareholders in target Co. (must be conditional on acquiring control).
4. Target Co. shareholders accept the letter of offer (must be at least 90% acceptance in order to obtain stamp duty exemption).
5. Acquiring Co. minutes the acceptance of the letter of offer
6. Acquiring Co. to do up a Section 80 statutory declaration (not required to be filed but hold on file for revenue audit purposes) or a Section 79 declaration if applicable.
7. Target Co. shareholders sign a stock transfer form to effect the transfer of the shares to acquiring company & claim S.80/79 exemption
8. Target Co. directors approve the transfer of the shares (minute this)
9. Acquiring Co. issues shares in acquiring Co. to target Co. shareholders in proportion to shares held in target Co. (if amalgamation then in proportion to value transferred in)
  - Follow procedures for issuing share – non-cash
10. Acquiring Co. issue share certificates;
11. Acquiring Co. files the form B5-return of allotments & B4 – alteration of authorised share capital, G1 & G2
12. Acquiring Co. on execution of the transfer arranges for the beneficial ownership register of the Company be updated within 14 days and that the Register of Beneficial Ownership (RBO) be updated for the change from Direct to Indirect ownership
13. Target Co. files B1 on ARD.

## Appendix V

### Company secretarial requirements for a share for share/undertaking transaction – three party swap:

1. Acquiring Co. draft business transfer agreement
2. Acquiring Co. hold board minute to:
  - Detail purpose of meeting and discuss BTA
  - to request approval from members to effect transaction & pass below resolutions
3. Acquiring Co. passes ordinary/special resolutions to (and file Form G1/G2 with CRO):
  - increase the authorised share capital of the company to allow the acquisition of the shares in target co. (as required by Section 80) or to include a new objects that being to acquire the company (option only applicable to DAC's) – Special resolution
  - give power to the directors to allot shares (if applicable) – ordinary resolution
4. Acquiring Co. passes ordinary/special resolutions to (and file Form G1/G2 with CRO):
  - approve the amended Constitution – Special resolution
  - That the acquisition of the undertaking be approved pursuant to S.238(1)(b) – ordinary resolution
5. That the company seal be affixed to the business transfer agreement – ordinary resolution.
6. Acquiring Co. makes a letter of offer to Target Co. (minute of board meeting to be held also whereby they recommend to members that it be accepted)
7. Target Co. confirm acceptance to business transfer agreement (or where shares are transferred) and Acquirer Co. minute this confirmation
8. Target co. hold board meeting:
  - detailing reason for transfer & how in best interest of Co.;
  - Obtain declaration of interest in transaction from directors (if applicable)
  - Review distributable reserves to ensure adequate
9. Recommend members to pass:
  - special resolution to approve & amend Constitution to allow the sale/transfer to acquiring company –
    - Carry out SAP 204 – directors declaration (e.g. file form G1 for to approve the variation, pass directors resolution and file with CRO within 21 days). Note there is debate among the legal profession as to whether a SAP 204 procedure is required where distributable reserves exist (in excess of the NBV of the shares being transferred out). Section 91 of CA 2014 states where something is transferred out in return for nothing being received by the disposing company, then a SAP 204 is required. Usually where the Company that is

- acquiring the undertaking is due to be sold in the near future then a purchaser's solicitor would require a SAP 204 procedure to be followed.
  - Where a DAC ensures objects allow for the transfer (if not amend constitution – special resolution)
  - Ordinary resolution to approve the transfer agreement and affix the company seal to it and give directors authority to sign the agreement
    - Including resolution to permit transfer under S.238(1)(a);
    - And the reduction of the capital and reserves of Co. by the set amount of the transfer (detailing amount) – S.91 requirement (assuming a SAP 204 is performed based on my comments above)
10. Target Co. accept the letter of offer (must be at least 90% acceptance in order to obtain stamp duty exemption where shares are being transferred) or business transfer agreement and board meeting of directors held to document this fact.
  11. Target Co. shareholders sign a stock transfer form to effect the transfer of the shares to acquiring Co. (where shares as opposed to a business are transferred)
  12. Acquiring Co. to do up a Section 80/79 statutory declaration (not required to be filed but hold on file for revenue audit purposes)
  13. Acquiring Co. issues shares in acquiring Co. to target Co. shareholders in proportion to shares held in target Co. (if amalgamation in proportion to value received)
    - Follow procedures for issuing shares – non-cash – minutes of board meeting
  14. Acquiring Co. Issue share certificates
  15. Acquiring Co. files the form B5-return of allotments/G1 & G2/B4
  16. Target Co. files SAP 204, G1 & G2

# Members Voluntary Liquidation Step Plan

Practice Support + Corporate Consultants + Tax & Legal + Practice Growth + Education & Training  
Practice Support + Corporate Consultants + Tax & Legal + Practice Growth + Education & Training  
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Practice Support + Corporate Consultants + Tax & Legal + Practice Growth + Education & Training





# XXXXX Limited

## Members Voluntary Liquidation

### Step Plan

#### Step Plan / Action Help Sheet

**Name of procedure:** Summary approval procedure to place a company into members' voluntary liquidation under Section 579

**Sectional references:** Section 579 of CA 2014 (Procedures for and commencement of members' voluntary winding up); Section 201 & 202 of CA 2014 (Summary Approval Procedure), Section 207 of CA 2014 (declaration to be made in the case of members' winding up of a solvent company); Section 181 (notice of general meetings), Section 193 (unanimous written resolution) & Section 194 (majority written resolution) of CA 2014; Section 208 of CA 2014 (requirement for an independent persons report); S643 CA 2014 (notifications and filings of appointments and removals of liquidators); Section 581 CA 2014 (Publication of resolution to wind up voluntarily); Section 705 CA 2014 (Final meeting and dissolution in members' voluntary winding up); Section 707 (disposal of books and papers of company in winding up); Section 584 CA 2014 (Duty of directors to call Creditor meeting) and Section 596 CA 2014 (Custody of company's property).

**Date:**

Steps:

## A) Steps required to be taken by the directors/shareholders

Step	Commentary	Legislative Reference	Done / Comments	Work done by Reviewed by
1	<p>There are a number of matters that are typically dealt with before commencement of the liquidation process to ensure the liquidation itself occurs without undue complication. In summary, prior to liquidation, the directors consider addressing the following matters (this is not an exhaustive list):</p> <ol style="list-style-type: none"> <li>1. Realise all assets where possible and ensure all liabilities where possible are paid off. For some companies this may mean considering the possibility of forgiving amounts owed to other group companies or converting the liabilities to share capital. However tax advice would need to be obtained on the consequences of same.</li> <li>2. Close any non-necessary bank accounts.</li> <li>3. Ensure Register of Members etc is up to date.</li> <li>4. Submit all outstanding taxation returns.</li> <li>5. Recognise the need to prepare and submit corporation tax returns and agree the liability from the end of the last accounting period down to the day before the date of commencement of liquidation if applicable.</li> <li>6. File with the Registrar of Companies all documents which the company is by law obliged to file.</li> </ol>			

	<p>7. Make appropriate arrangements to discharge or to enable the company to discharge (within twelve months of commencement) all of its debts in full.</p> <p>8. Where VAT will likely be an irrecoverable cost:-</p> <p>i) Make appropriate arrangements for the payment of fees and expenses to be incurred in preparing the pre-liquidation documentation and procedures to put the company into liquidation.</p> <p>ii) Make appropriate arrangements for the payment of fees, expenses and outlay to be incurred by the liquidator in conducting the winding up and liquidation of the company to completion and in distributing the assets.</p> <p>9. Consider the choice of liquidator.</p> <p>10. The directors to ensure that the company is solvent and has the funds to pay all creditors in full and to pay for the liquidation process.</p> <p>11. Review loans attached to assets in the company to see if the bank will provide funding to the shareholders to allow the loan in the company to be repaid through a subscription of shares by the shareholder with the proceeds of the shares subscribed for in order to avoid stamp duty when the loan liability is distributed by the liquidator. If this is allowed new shares will have to be subscribed for and the usual process for the allotment of shares should be followed.</p>			
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2	<p>Prepare a statement of affairs of the company as at a recent date (not more than three months prior to the proposed liquidation date/meeting of members to approve the placing of the company into liquidation), including detailed listings of assets and liabilities. Ensure the costs of liquidation including taxes (capital and corporation tax) is included in the analysis.</p> <p>Where property is involved obtain valuations for the property. Further accounts will also need to be prepared up to the date the Company appoints a Liquidator (i.e. for the period from the date the statement of affairs was prepared above to the date the liquidator was appointed).</p> <p>Assess the tax consequences for the company of any deemed disposals (CGT, corporation tax etc.) and ensure they are included in the liabilities assessment above.</p> <p>As a side note assess the tax consequences of the deemed disposals for the members themselves (CGT etc).</p>	S207(1) CA 2014		
3	<p>Obtain from the Liquidator Designate a <a href="#">Letter of Consent</a> to appointment subject to receiving the shareholder indemnity as detailed in step 14.</p>			
4	<p>Arrange to <a href="#">hold a board meeting</a> no longer than 12 months from the carrying out of the act of liquidating the company. At this meeting agree to propose to the members to pass a special resolution to:</p>	S202(1) CA 2014		
4a	<p>- <a href="#">approve the statement of affairs</a>/declaration of solvency/E1-SAP and the summary approval procedure.</p> <p>Note the <a href="#">E1-SAP</a> is the declaration of solvency</p>	S202(1) CA 2014		

4b	<p>- the majority of directors (75% or more of the directors) or all of the directors agree to recommend to the members to allow the company to be placed into liquidation and a special resolution be passed to permit this activity.</p>	S201 & S202(1) CA 2014		
4c	<p>At <a href="#">this meeting or a meeting held not earlier than 30 days</a> before the approval of the members by special resolution (where an initial meeting discussed in step 2 has been held after this 30 day period), the directors should make a declaration in writing declaring that having made full enquiry, the company will be able to pay its debts and other liabilities as they fall due within 12 months following the date of commencement of the winding up i.e. the date the resolution is passed (Section 201 &amp; 202 CA 2014). See step 4 for further items to be included in the directors' declaration.</p> <p>The special resolution can be in writing under Section 193 (unanimous resolution)/ Section 194 (majority resolution) or passed at an extraordinary general meeting.</p> <p>Where the resolution is passed in writing then the directors' declaration must be attached to the written resolution.</p>	S202(6) CA 2014		
5	<p>Obtain a report prepared by a person who is qualified to be the independent auditor of the company stating in that experts opinion, the declaration (as detailed in step 2 and 6p) made by the directors is not unreasonable.</p> <p>The independent accountant should complete a review of the statement of assets and liabilities and the <a href="#">declaration of solvency/E1-SAP</a> for the company and if satisfied as this being not unreasonable provide the <a href="#">Section 208 Report of Independent Persons ("B")</a> to be annexed to the Form E1-SAP. Note this report</p>	S208 CA 2014		

	should be obtained prior to the passing of the special resolution to wind up the company by the shareholders			
6	The <a href="#">minutes of the board meeting</a> in step 4 should detail:	Section 201, 202 & 204 of CA 2014		
6a	the name of the company			
6b	the date, location and time of the meeting and the members present at the meeting			
6c	details of who was appointed chairperson of the meeting			
6d	that the directors <a href="#">have disclosed their interest in the decisions been taken under Section 231</a> of CA 2014; Note that notwithstanding the disclosures, was pursuant to the companies Constitution, entitled to vote and be counted in the quorum in relation to any matter in which he/she has an interest. It should also state whether a quorum was present if there is a minimum requirement stated in the constitution.	S231, 228 & 229 of CA 2014		
6e	Ensure and state the fact that at <a href="#">least one director is a resident in the European Economic Area</a> as required by Section 137 CA 2014 and that no director present holds more than 25 directorships for the purposes of and in accordance with Sections 228 and 229 CA 2014.	S137 CA 2014		
6f	Ensure that it records (and ensure it is a fact) the fact that <a href="#">no director is restricted</a> from acting as a directors as detailed in Section 819, 839, 840 841, 842 and 828 of CA 2014.	Section 819, 839, 840 841, 842 and 828 of CA 2014.		

6g	<p>Include a paragraph for '<a href="#">Purpose of meeting</a>' providing exact details for the reason why the meeting was held e.g. to consider and if thought fit to approve for consideration of the company's members, the placing of the company into a members voluntary liquidation under Section 579 and as part of this to provide a declaration from the majority of the directors as required by Sections 202, 207 &amp; 579 of CA 2014 in order to allow the company to be placed in liquidation and to recommend to the shareholders to pass a special resolution to effect the transaction.</p>	S202 & 207 & 579 CA 2014		
6h	<p>Note the fact that a <a href="#">liquidator had been invited to accept appointment</a> and this liquidator had accepted appointment subject to receiving a shareholders indemnity. Provide details of the name and address of the proposed liquidator</p>			
6i	<p>Provide details of the <a href="#">requirements of the summary approval procedure (requirement for a special resolution)</a> with reference to Section 579 and what is to be included in the directors declaration under Section 207 in the minutes. That being:</p> <p>1) The majority of directors must make a declaration stating:</p> <ul style="list-style-type: none"> <li>- the total amount of the company's assets and liabilities at the latest practical date before the making of the declaration at the latest date not more than 3 months before the date of the declaration;</li> <li>- that the declarants have made full inquiry into the affairs of the Company and that, having done so, they have formed the opinion that the company will be able to pay or discharge its debts and other liabilities in full as they become due within 12 months after the commencement of the winding (usually the date the special resolution is passed by its members as stated in the declaration);</li> </ul>	S579, S202, S207 & 208 CA 2014		

	<p>2) that a special resolution is required to be passed by the shareholders approving the reduction in capital.</p> <p>3) that the declaration of the directors is accompanied by a report prepared by a person who is qualified to be the independent auditor of the company stating in that experts opinion, the declaration made by the directors is not unreasonable.</p> <p>Note the requirements of points 1 and 2 above are covered off when the majority of directors signs the declaration part of the form E1-SAP.</p>			
6j	Detail the fact that the <a href="#">directors were advised of the serious nature of the Section 579/207</a> declaration and the penalties that the directors were liable for if the directors make the declaration without unreasonable grounds for doing so (i.e. they may be liable for all liabilities that arise within the 12 month period).	S210 CA 2014		
6k	Detail the fact that the <a href="#">directors took account of the financial position and liabilities of the company</a> (including prospective and contingent) and have assessed the financial position of the company. Include the fact that the directors were presented with the balance sheet as part of this process detailing the assets and liabilities of the company as at a specific date (state date which is within 3 months of the date of the declaration) as compiled at step 2 above.	S207(1) CA 2014		
6l	Have the directors' declaration signed by all or a majority of directors. The declaration is effectively the Form <a href="#">E1-SAP</a> which can be downloaded from the CRO website. Note the requirements below are covered off in form E1-SAP in the directors declaration of that form (note this must be signed before the resolution is passed by its members):	S207(1) CA 2014		
	- the total amount of the company's assets and liabilities at the latest practical date before the making of the	S207(1)(a) CA 2014		



	declaration at the latest date not more than 3 months before the date of the declaration (as complied at step 2 above);			
	- that the declarants have made full inquiry into the affairs of the Company and that, having done so, they have formed the opinion that the company will be able to pay or discharge its debts and other liabilities in full as they become due within 12 months after the commencement of the winding (usually the date the special resolution is passed by its members);	S207(1)(b) CA 2014		
6m	Detail the fact that the directors declaration (i.e. the <a href="#">form E1-SAP</a> ) and the <a href="#">proposed special resolution was produced to the meeting</a> for consideration			
6n	Detail the acknowledgement of the directors of the obligations imposed under Section 207 and the fact that they <a href="#">acknowledge that the draft declaration was true and correct.</a>	S207 CA 2014		
6o	Detail the fact that the <a href="#">directors' declaration/E1-SAP was produced to the directors for their review</a> and after consideration it was signed by all or a majority of directors on the basis that all the conditions required by Section 207 as detailed above had been met, they were happy to proceed to deem the Section 207 Declaration executed. Some points to consider when filling in the <a href="#">Form E1-SAP</a> (i.e. the directors declaration) are:	S207(1) CA 2014		
6pi	In the declaration section of the <a href="#">form E1-SAP</a> , insert names and address of all of the directors that are swearing the declaration  Note if there is not enough space on the form include in this section 'See continuation sheet'. A continuation sheet should then be included which should be laid out in the same layout as the <a href="#">form E1-SAP</a>	S207 CA 2014		

6pii	In the declaration section under the names and addresses of directors, indicate whether 'all' or 'a majority' of directors signed the declaration.	S207 2014	CA		
6piii	In the note 3 section of the declaration, include the date the statement of assets and liabilities were made up to (it cannot be in excess of three months from the date the <a href="#">form E1-SAP</a> was signed). This is the analysis prepared in step 2 above.  In the total assets and liabilities area include the total value of those assets and liabilities	S207 2014 (i)	CA		
6piv	In note 4 section of the declaration, include details of the persons filing the form	S207 2014	CA		
6pv	In note 5, page 2 of <a href="#">form E1-SAP</a> insert when you expect the debts to be paid within. This period cannot be in excess of 12 months from the date of commencement of the winding up.  Ensure this is signed by all directors making the declaration and date the declaration.  NB If the declaration of the directors and the special resolution is passed on the same day, the time the declaration is passed on must be written in here also. The declaration must be signed at a time earlier than the passing of the special resolution of the members. Therefore it is also important to put the time on the G1 to confirm the declaration was made prior to the time of the special resolution being passed	S207 2014	CA		
6pvi	In the note 6 part of the <a href="#">form E1-SAP</a> on the second page, it is likely the auditor will want to supply their own opinion page as opposed to writing in the space provided. If this is the case then insert 'See Part "B" attached and attach <a href="#">the independent persons report</a> to the form E1-SAP and at the top of this report write 'Part "B"'	S208 2014	CA		

	Note this opinion should be dated prior to the passing of the special resolution. See attached in the linked documents below a sample independent persons opinion under Section 208.			
6q	Detail the <a href="#">wording of the special resolution to be provided to the shareholders for approval</a> . This should detail the fact that the company be wound up voluntarily as a members voluntary winding up under Section 579; detail the name and address of the liquidator appointed and authorise the liquidator to distribute the assets amongst the members in specie.	S202 2014	CA	
6r	Recommend that the directors' declaration/ <a href="#">Form E1-SAP</a> and the special resolution when passed be filed with the CRO within 21 days and within 15 days respectively.	S207(2) 2014	CA	
6s	Detail the fact that it was resolved that an <a href="#">extraordinary general meeting</a> be held to allow the shareholders to vote on the special resolution and that the required notice be given to all members together with a copy of the signed directors' declaration/ <a href="#">Form E1-SAP</a> which includes the independent persons report (which is a person authorised to be a statutory auditor).  THIS STEP IS ONLY PERFORMED WHERE A WRITTEN RESOLUTION IS NOT BEING PASSED I.E. WHERE A MEETING IS HELD.	S181 2014	CA	
6t	Declare the meeting closed			
6u	Have the chairperson sign and date the board minute and insert it into the minute book of the company.			
7	Where applicable <a href="#">draft the written special resolution based on the resolutions</a> detailed in the board meeting at step 6q above and reference the fact that the directors resolution/Form E1-SAP is attached to the written resolution itself (which includes the independent persons report) and have this resolution signed by all members entitled to vote where a unanimous resolution has been passed in accordance with Section 193(1) CA 2014. Ensure the company name and number is included at the top of this	S193 2014  S194 2014	CA  CA	



	notify the company of <a href="#">a proxy</a> being used. A consent to short notice should be signed by all members including the auditor (if applicable) where less than the statutory notice is provided which is a signed confirmation from all parties that they consent to the short notice. A <a href="#">copy of the directors' declaration</a> should be attached to the notice of the meeting.			
8	<p>Where an <a href="#">extraordinary meeting</a> is held (as opposed to a written resolution), <a href="#">draft the minutes of the extraordinary general meeting</a> with the usual requirements (as per steps 6(a)-6(c)) and detail the approval of the special resolution to approve the placing of the company into liquidation. Where consent to short notice was given note this in the minutes to the meeting.</p> <p>Detail the fact that the chairperson had an obligation pursuant to Section 643(1) to issue to the liquidator notice on the same day that the members have approved that person as liquidator of the company and as a result he/she was instructed to write to the liquidator informing him/her of this fact.</p> <p>Ensure the minutes are signed by the chairperson.</p>	S202, S643(1) CA 2014		
9	<p><a href="#">Hold a board meeting to advise that:</a></p> <ul style="list-style-type: none"> <li>- the shareholders had passed the resolutions at the extraordinary general meeting held earlier in the day or through written resolution if applicable; and</li> <li>- to instruct the secretary to file the <a href="#">Form G1 (and annexure if applicable)</a> (within 15 days of passing the resolution) together with the directors' declaration of solvency/<a href="#">Form E1-SAP</a> within 21 days to the CRO; and</li> </ul>	Section 201(3) & 207 of CA 2014		

	Document in the board minutes the aforementioned facts in addition to the standard confirmations detailed in step 6(a) to 6(f) above.			
10	If the company changed its name within 12 months of being placed into members voluntary liquidation both the old and new name must be detailed on all correspondence.	S595(5)		
11	Ensure a <a href="#">copy of the declaration</a> is delivered to the CRO not later than 21 days after the date on which the restricted activity commenced. If it is not submitted within this period it will invalidate the summary approval process. Ideally it should be sent with the G1 which itself has to be submitted within 15 days.  Ensure that the <a href="#">Form E1-SAP</a> is pre-checked by the solvency section in the Companies Registration Office as if it is filled in incorrectly it will be deemed to be a creditor's voluntary liquidation unless this is reversed by the courts.	Section 201(3) of CA 2014		
12a	File the <a href="#">Form G1 (and annexure if applicable)</a> with the CRO ensuring that the directors' declaration is attached to the G1 (within 15 days of passing the special resolution).	S191 CA 2014		
12b	in the effective date on the G1, date this the date the special resolution was dated. If the date the declaration of solvency/E1-SAP was signed the same day as the G1, include the time the special resolution was passed as this must be after the time of the passing of the declaration of solvency. Include the company number and Company name on page one of Form G1			
12c	In the resolution details section of the Form G1, <a href="#">type the resolutions passed</a> into the resolution text area on the form G1 which is an exact replicate of the resolution prepared at step 7 above or alternatively attach a copy of the resolution prepared and state 'see resolution attached' and include an <a href="#">annexure</a> .			

12d	In the resolution passed section of the Form G1, insert 'In writing' if done by a written resolution as opposed to by a formal meeting. If by meeting select the general meeting option.			
12e	In the writing type section of the Form G1, insert 'Pursuant to section 193(1) (unanimous written resolution) if it is done by written resolution under S193 CA 2014. If it is done by written majority resolution (S194 CA2014) insert 'PURSUANT TO Section 194' If it is passed by meeting then insert 'extraordinary general meeting'.			
12f	In the section 'particulars of persons verifying the contents of the form', under revenue online section include 'No' where it is being filed on core			
12g	Complete the information of the person/director that will sign the signature page at 'particulars of persons verifying the contents of the form' of the Form G1 on CORE or if done by hard copy in the certification section of the form			
12k	Include details of the agent presenting/filing the From G1 in the detail of presenter section of the Form G1			
12l	File the Form G1 on CORE or send to the CRO together with the directors' declaration where a hard copy is filed out			
12m	Arrange for a director to sign the electronic G1 signature page once filed on core (where core is used) and send this to the CRO.			
13	<a href="#">Directors to write to the liquidator</a> sending a copy of the form G1 and confirming the approval of his/her appointment as Liquidator (should ideally be done on the same day).  The shareholders should also send <a href="#">a shareholder indemnity</a> and this indemnity should state the information as stated in the step 14 below.	S643(1) CA 2014		
14	The shareholder will be required to give an <a href="#">indemnity to the Liquidator Designate</a> in respect of any claims or liabilities arising which had not been disclosed in the statement of affairs. This			

	<p>indemnity should be signed by all shareholders and state the fact that the shareholders will indemnify the liquidator:</p> <ul style="list-style-type: none"> <li>- against any and all costs, expenses, losses, claims and liability whatsoever or howsoever arising, in connection with his/her role as Liquidator of the company and in consideration for an early distribution to the shareholders by the Liquidator, on account of surplus assets of the company available for distribution.</li> <li>- that the indemnity is given generally, unconditionally and irrevocably, to include (but not limited to) the company's exposure to taxation on chargeable gains on a deemed disposal of assets, should the Revenue Commissioners rule that relief therefrom should not be available to the company, and to include any claim or liability of the company which may not have been disclosed in the statement of affairs and declaration of solvency sworn by the directors of the company, as well as Liquidator's remuneration and any legal and professional fees and expenses necessarily incurred in dealing with all matters or any unforeseen matters arising in the winding up of the company's affairs.</li> </ul>			



B) Steps required to be taken by the Liquidator			
15	Liquidator to arrange for statutory form <a href="#">E2 notice of appointment of a liquidator to be filed</a> with the Companies Registration Office within 14 days of his/her appointment (i.e. the date the resolution was passed).	S643(5)/ S592 CA 2014	
16	<a href="#">Legal notice to be placed in Iris Oifiguiil</a> within 14 days of the EGM or the written resolution. A copy of the notice of the advertisement in the Iris Oifiguiil should be maintained.  This is a copy of the special resolution passed and should state at the top 'In the name of (XXXX Limited) in the matter of the Companies Act 2014. It should then state the date the special resolution was passed and how it was passed (i.e. written or by meeting), and then include the actual resolutions passed and it should be signed by the company secretary. At the bottom the following should be included 'This is a members' voluntary liquidation. All creditors have been or will be paid in full.'	S581 CA 2014	
<b>All steps below relate to the period after the company is placed into voluntary liquidation. The below list is not exhaustive and is for educational purposes only</b>			
17	Liquidator to take possession of all assets and obtain the statutory books, company seal and books and records	S596 CA 2014	
	If beneficial, arrange for the liquidators fee to be agreed at the AGM at the date of appointment of the liquidator. The fee must be approved by the members in a general meeting.  Before any part payment is made to the liquidator this is required to be approved by the members at a general meeting	S646(2)(c) CA 2014  S647(2)(c) CA 2014	
18	Liquidator to ensure that all company headed paper has the wording 'In Voluntary Liquidation' after the name of the company	S595 CA 2014	
	Obtain Corporation tax/PAYE/PRSI/VAT/ RCT number of the company as applicable.		

19	If applicable circularise all shareholders of the company informing them of the liquidation, enclosing a summary of the statement of assets and liabilities of the company embodied in the Declaration of Solvency, and request details of their shareholdings, evidenced by share certificates.			
20	Liquidator review deeds and related documentation to assess ownership			
21	<p>Obtain company schedule of insurance, assess insurance needs and seek to maintain/reinstate company insurance covers, with the liquidator's interest noted thereon. Consider implications of inability to obtain cover for conduct of liquidation – especially for continuation of the trade.</p> <p>Where land and buildings are concerned, ascertain whether public liability insurance cover is in place. Access to properties should be strictly limited until cover is obtained, or alternatively persons entering should sign an appropriate waiver acknowledging that there is no insurance in place and no liability is accepted by the liquidator or his firm.</p>			
22	<p>Liquidator should notify the company's bankers of his/her appointment and send a copy of the special resolution. This letter should request details of all bank accounts held by the companies.</p> <p>Liquidator should then close company accounts and open liquidator's own bank accounts.</p>			
23	Liquidator should notify the solicitors of his appointment requesting them to provide details of what matters they are			

	acting for the company in and to provide details of any cash or deeds etc. held			
24	<p>Liquidator to notify creditors of his/her appointment and confirm balances</p> <p>e.g.</p> <ul style="list-style-type: none"> <li>• Banks, including debenture holders (if any)</li> <li>• Collector General</li> <li>• Company's auditors, solicitors and brokers</li> <li>• Company's insurers/brokers</li> <li>• Corporation/City or County Council</li> <li>• Department of Business, Enterprise and Innovation</li> <li>• Social Welfare Department</li> <li>• Electricity/gas supplier</li> <li>• Hire purchase and leasing companies</li> <li>• Landlords</li> <li>• Telephone service provider</li> </ul>			
25	Liquidator to collect all debtor balances and circularise debtors if necessary.			
	Arrange for any unredeemed vouchers to be redeemed and procedures to be put in place if the vouchers are not redeemed			
26	Liquidator to Notify Sheriff(s) and Revenue Commissioners and obtain certification of posting asking for details of all judgements, returns filed etc. The liquidator should enclose a copy of the special resolution.			
	Collect, cancel and return all company charge cards, credit cards and debit cards to the issuing companies. Inform them of the position and request statements of claim			
	Ensure Corporation tax returns for date up the date of appointment are filed within 3 months of being placed into liquidation			

	Ensure preliminary tax is paid for the post liquidation period (especially where the company is still trading).			
	<b>If the liquidator is trading while in liquidation – then follow the trading liquidation checklist below</b>			
27	<p>Liquidator to obtain Revenue printout of all taxes / copies of last corporation tax submissions and check that all of the tax affairs of the company up to the date of liquidation have been brought up to date.</p> <p>Liquidator to arrange for corporation tax returns to be prepared to the date the company goes into liquidation for the company.</p> <p>Liquidator to arrange for further corporation tax returns to be prepared for the company up to the date of the appointment of him/her as Liquidator.</p> <p>Liquidator to obtain copies of last Vat/P30/P35 returns etc and (if necessary) to arrange for the bringing up to date of VAT/P30/P35 etc returns and agree liability to date of appointment.</p> <p>When all pre-liquidation tax matters have been agreed with Revenue, the Liquidator will seek confirmation from the Revenue Liquidation Section that all pre-liquidation returns have been filed and that there are no taxes owing.</p>			
28	Liquidator to register for taxes for the company (depending on applicability corporation tax, CGT, PAYE/PRSI/VAT etc) and ensure that all tax liabilities arising from the deemed disposals or any trading activity during the post liquidation period are paid on or before the due dates to avoid penalties and interest assessments.			
29	Assess whether the liquidator will require the assistance of Solicitors as part of the conveyancing			

30	Ascertain how the books and records will be stored on finalising the liquidation.			
31	<p>Consider GDPR requirements – consider including a link to Privacy policy on the post appointment letters which directs the parties to the website (See CCAB-I technical release 02/2019).</p> <p>On appointment ensure the premises is secure and all GDPR data in relation to personal information is maintained. If the system or physical storage facility is supplied by an external provider you will need assurances from them contractually that they have appropriate security in place</p> <p>Where the liquidator is going to use the services of others ensure that a Data Processor agreement is in place.</p> <p>Ensure a data processor agreement is in place with the Company</p>			
	Consider the need for security of buildings, plant, machinery, stocks etc.			
	Arrange for re-direction of mail to the liquidator’s office, if necessary.			
	<p>Arrange for employees to be made redundant and ensure sufficient notice is given.</p> <p>Arrange for the statutory redundancy calculations to be carried out and paid out.</p>			
	<b>Steps where Company is still trading at date of appointment</b>			
	1. It is usual in members' voluntary liquidations for trading to have ceased prior to or on the appointment of the liquidator. If for whatever reason trading has not ceased, consider the extent to which trading should continue with a view to achieving a better realisation of the assets (not necessarily for a trading profit).			

	<ol style="list-style-type: none"> <li>2. Compare estimated net realisations if trading continues with estimated net realisations if trading ceases. A decision to trade may be taken if the anticipated recoveries on trading are more favourable than on a forced sale basis, not only from the point of view of certain assets but also from the point of view of selling the entire business on a going concern basis.</li> <li>3. Revisit insurance issues – are appropriate employee, product and public liability covers obtainable? Ensure that the liquidator is named as an interest party on the insurance documents</li> <li>4. Consider whether it is necessary to keep some or all locations open, some or all parts of the business going, and decide which parts and/or locations should be closed.</li> <li>5. If continuation of the trade appears warranted, obtain a resolution from the shareholders authorising trading to be continued by the liquidator.</li> <li>6. Arrange a meeting with all employees and explain what it is hoped to achieve and what is expected from them. This may be coupled with the first meeting with the employees to explain their rights under employment protection legislation.</li> <li>7. If employees are unionised, keep the union officials informed of the position and discuss with them any matters arising which affect employees.</li> <li>8. Arrange meetings with all company officers and other key employees and explain precisely each person's duties. Discuss all aspects of trading. Provide letters detailing and authorising delegated duties.</li> </ol>			
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	<p>8. Ensure that trading with unsecured creditors in a position to exercise liens is not continued after liquidation or alternatively that clear agreements are reached whereby no set off between pre and post liquidation claims is attempted. (This should make no difference in the long run but will affect the cash flow situation in the short term).</p> <p>9. Ensure that any agreements for the lease or hire of equipment, etc are continued on a week-to-week basis or cancelled, as appropriate.</p> <p>10. Ensure that any long term contracts for the sale of the company's products or services and/or its purchases are renegotiated and continued (if necessary) on such terms and conditions as will not produce claims for damages against the liquidator when trading ceases. Discuss the implications of any long term contracts with the liquidator's solicitors if necessary.</p> <p>11. It is essential that trading is closely monitored and that proper controls are established, particularly for:</p> <ul style="list-style-type: none"> <li>• The ordering and purchasing of goods and services;</li> <li>• The receipt and certification of goods purchased;</li> <li>• Work in progress;</li> <li>• The despatch and sale of goods;</li> <li>• Return of faulty goods purchased and sold;</li> <li>• Collection of trade debts;</li> <li>• Payments for purchases;</li> <li>• Payment of wages;</li> <li>• Payment of sundry cash expenses;</li> <li>• Cash takings, their banking and security arrangements;</li> </ul>			
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	<ul style="list-style-type: none"> <li>• Accurate records of purchases and sales, receipts and payments;</li> </ul>			
	<p>Employee matters – Arrange for meeting with employees to explain the process, how long the company will trade for, whether there is a change in management reporting etc.</p> <p>If the decision is taken to cease trading, ensure that the employees have given their legal notice and arrange for formal notification.</p> <p>Arrange for the redundancy calculations to be determined and provide a formal cessation date.</p>			
	<p>Consider the Management and Accounting Controls that are in place to ensure they are sufficient</p> <p>Ensure that appropriate accounting Records are maintained between the date of appointment and the cessation of trade.</p> <p>Ensure all invoices, paperwork has the words ‘In Voluntary Liquidation’ after the name.</p> <p>Ensure the new VAT number is included on invoices etc.</p> <p>Taxation – Ensure all</p> <ul style="list-style-type: none"> <li>- PAYE returns are filed &amp; payments made and supporting records maintained. Before any payment is processed ensure the payment is processed on ROS</li> </ul>			



	<p>If payroll is being processed by a third party – ensure these are reviewed by the liquidator prior to anything being filed and any payment being made.</p> <p>Ensure returns are kept up to date</p> <ul style="list-style-type: none"> <li>- Where pre liabilities ensure the return and payments are made</li> <li>- VAT returns are filed and supporting records maintained. Before any payment is processed ensure the payment is processed on ROS</li> </ul> <p>If VAT is being processed by a third party – ensure these are reviewed by the liquidator prior to anything being filed and any payment being made.</p> <p>Where there is a time lag between the date of the liquidator registering for VAT and obtaining a VAT number then ensure any invoices issued have the words "VAT number pending"</p> <ul style="list-style-type: none"> <li>- RCT returns are filed</li> </ul> <p>Purchases and Creditors - Ensure that back up is on file for all purchases etc.</p> <p>Property Sales – Post Contract Work</p> <p>Stock and Production Costs</p>			
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	<p>Sales and Debtors – Ensure raised in line with Vat regulations</p> <p>Bank and Cash Balances - Ensure periodic bank reconciliations are performed. Ensure daily cash counts are carried out etc. etc.</p>			
	<b>REALISATION OF ASSETS</b>			
29	<p>Liquidator to convene a meeting of contributories/shareholders of the company at which the Liquidator discusses items and may make a distribution in specie of properties/cash etc. and signs legal documentation conferring title on the shareholder if a distribution is being made. At this meeting the liquidator will agree the realisation strategy with the members also.</p> <p>The distribution in specie is approved by the members.</p>			
	<p>Before distributions made ensure indemnity in place and letters informs shareholders of his own tax position &amp; the fact that liquidator is not advising in this respect (signed letter should be included on the file).</p>			
	<p>If non-cash assets are to be distributed to the directors then arrange for Section 238 CA ordinary resolution to be passed</p>			
	<p>If stock exists at date of liquidation – arrange for stock count – if considered necessary.</p> <p>Determine a strategy for its disposal.</p> <p>Segregate carefully all stocks which are the property of third parties (e.g. on loan, sale or return, etc) or subject to reservation of title claims by suppliers. Arrange for stock to be jointly counted by a company staff member and the supplier representative where a supplier wishes to count stocks on hand.</p>			

	<p>Enquire into company stocks held by third parties and arrange their return or an acknowledgment that they are held to the order of the liquidator:</p> <ul style="list-style-type: none"> <li>• Goods in outside storage;</li> <li>• Work with sub-contractors;</li> <li>• Goods on consignment or approval;</li> <li>• Goods with carriers.</li> </ul>			
	<p>If debtors exist, ensure these are correct and proceeds received.                  If no payment, consider solicitors letter</p>			
	<p>If fixed assets exist, obtain list of assets, confirm the company has title to the assets.</p>			
	<p>If land and buildings exist, obtain list of assets, confirm the company has title to the assets.</p> <p><b>Applicable for Land and buildings</b>                  For any land and buildings, ensure there is a valuation to support the values. Arrange for solicitors to do conveyancing certificate. Assess whether these are distributed in specie.</p> <p>Ensure insurance cover is in place up to the date of disposal.</p> <p>Assess the VAT implications on disposal of the property (assess if the option to tax is available – watch connected persons)</p> <p>If required ensure CG50 certificate is obtained before any disposal.</p> <p><i>Work Required between Exchange and Completion</i></p>			

	<p>Prepare to terminate/transfer service contracts (eg public utilities/security); attach schedule.</p> <p>Arrange meter readings.</p> <p>Liaise with solicitor on apportionment account with reference to rent (receivable and payable), rates and insurance, service charges, agents'/legal fees.</p> <p>Advise managing agents and ensure that final statement included at completion.</p> <p>Notify insurers of dates of exchange and completion and insurance arrangements with purchaser.</p> <p>Review files re contracts/orders placed, other undertakings; prepare schedule of outstanding matters to be cleared prior to completion of liquidation.</p> <p><b><i>Work Required shortly after Completion</i></b></p> <p>Terminate/transfer service contracts as above (including managing agents – obtain final account).</p> <p>Cancel any undertakings given, e.g. to public utilities, and obtain acknowledgements.</p> <p>Pay outstanding suppliers' accounts.</p> <p>Obtain and check final insurance premium and adjustment, ensuring that there are no arrears payable to insurers.</p>			
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	<p>Confirm with agents and legal advisors that all outstanding matters have been settled on completion.</p> <p>Ensure rates liability is discharged or confirmed as landlord or tenants' liability.</p> <p><b>Final Closure – Work Required</b></p> <p>Revisit terms of sale and any other agreements entered into and confirm no outstanding proceeds or contingent liabilities.</p> <p>Ensure that the liquidator is entitled to all income received (including opening cut-off, reconciliation to rent roll for the whole period of the liquidation and to apportionment account. NB: beware income required to be held in trust for tenants – e.g. maintenance fund).</p> <p>Obtain suitable undertakings or make provisions if there are outstanding matters to be dealt with.</p>			
30	<p>Where purchasers make offers for assets e.g. by fax or e-mail, any acceptance must make it clear that the liquidator is selling without any kind of representation, since otherwise there is a danger that the description and terms of the purchaser's offer will form the basis of the contract. The vendor's terms on the invoice alone are not adequate protection as the invoice is a post contract document.</p> <p>Raise any invoices on the sale considering all VAT requirements</p>			
	<p>If motor vehicles are sold, ensure the tax book/vehicle ownership book is signed and submitted to the relevant authorities</p> <p>Ensure ownership is transferred and an indemnity is obtained</p>			

	Pay any outstanding creditors in relation to property or otherwise			
31	If at any time the Liquidator considers that the company will not be able to pay its debts within 12 months of the commencement of liquidation then the liquidator should treat this liquidation as a Creditors voluntary liquidation as detailed in Section 584 of CA 2014 and do the tasks section out in Section 584	S584 CA 2014		
	Ascertain the dates and costs of acquisition of properties and prepare CGT computations following sales.			
32	Liquidator arranges for payment of all liquidation expenses, solicitors and professional fees, taxes, creditors etc.			
	For unsettled debtors, consider whether these can be distributed?			
	Confirm with revenue that all pre-liquidation matters have been dealt with and nothing remains open			
	Where registered for VAT ensure VAT returns are submitted bi-monthly by the return deadline.			
	Maintain a receipts and payments account on the liquidation and ensure that all receipts are documents and all payments have supporting documentation.  Ensure the liquidators fee and his solicitors fee is shown separately.			
33	Liquidator will then arrange for the final distribution of any remaining cash/assets etc. to shareholders. Ensure minutes are kept.  For any distributions made, inform the shareholders (ensure the entitlement is calculated correctly in line with the rights on the shares held by them) of the distribution in a letter,. And ask them to sign the letter as confirmation that they have instructed the liquidator to make the distribution			

	Ensure client bank account is maintained with supporting back up for all payments/receipts which are appropriate approved			

	<b>COMPLETION ACTIVITIES</b>			
	Submit all post liquidation tax returns and confirm all matters have been dealt with by way of letter to revenue.			
	Review all working papers on the liquidation and ensure they are correctly referenced.			
	Confirm all creditors have been paid.  Confirm all assets have been realised or distributed  Ensure all tax refunds and liabilities have been discharged			
	Apply for VAT deregistration, if applicable but only after all expenses and fee notes have been received.			
	Compile list of receipts and payments that arose and ensure appropriate back up for all.  Ensure Bank reconciliation is prepared and reconciles out.			
	Arrange for books and records to be maintained for 6 years. Contact the storage provider if required			
34	Liquidator draws up draft final account for the company			
	If the liquidation goes on for over 12 months (check to confirm the company will be able to pay its debts such that it is not converted to a CVL) then arrange for the annual general meeting to be held not later than the 12 month anniversary since the commencement of the winding up giving an account of the liquidation.  Ensure that within 7 days of holding this meeting that the Form E3 is filed with the CRO. Failing this the liquidator will be deemed to have committed a category 3 offence.	S680 CA 2014		



	If the winding is not concluded within 12 months of the commencement date, then there is an obligation to file a form E4 providing details of the winding. The E4 must be filed every 6 months after that 12 month period. This is to be completed within 14 days of the relevant date	S681 CA 2014		
35	For the <a href="#">final meeting the liquidator must convene a general meeting for members of the company</a> , giving 28 clear days' written notice to the members. <a href="#">Proxies forms</a> should also be sent. Proxies should not have pre-printed names on them.  Note: Liquidator will enclose with the notice a summary of the liquidator's receipts and payments, together with a brief report on the liquidation.	S705(3) CA 2014		
36	<a href="#">At the extraordinary meeting:</a> <ul style="list-style-type: none"> <li>- Ensure a quorum is present</li> <li>- Lay before the meeting an account of the acts and dealings of the liquidator</li> <li>- Obtain approval of liquidator's remuneration;</li> <li>- Pass a special resolution (75% majority of those voting required) that books and papers and company seals of the company be retained for 6 years after dissolution and disposed of thereafter by the liquidator.</li> </ul> <p>Have the liquidator sign the minutes of the meeting.</p> <p>If applicable arrange for final distributions to members.</p>	S707(1)(a), S707(2) CA 2014		
37	Liquidator to <a href="#">file return of final winding-up meeting (Form E6/13)</a> and <a href="#">liquidator's statement of account (Form E5/14)</a> for the company at Companies Office within 7 days of meeting.	S705(4)(b), 705(6), CA 2014		

	<p>The liquidator must also furnish a copy Form E5/14 for the company to Revenue.</p> <p>The liquidator to file copy of special resolution (Form G1) for the company at Companies Office within 15 days. The type of resolution to be included in the 'resolution to be filed' section of the G1 is a 'G1S Special resolution authorising liquidator to dispose of books'</p>			
38	<p>The Companies shall be deemed "dissolved" approximately three months (90 days) later (once E5 and E6 registered with CRO).</p>			
<p>In my professional opinion in my capacity as the liquidator, work carried out is sufficient from a company law and taxation perspective.</p> <p><b>Prepared by:</b>  <b>Signed:</b> _____ <b>Date:</b> _____</p> <p><b>Reviewed by:</b>  <b>Signed:</b> _____ <b>Date:</b> _____</p>				



# Corporation Tax Client Query List

## Corporation Tax Compliance Checklist

Client:

No.	Details	Comment
<b>Tangible Fixed Assets</b>		
1.	Is there a full list of additions and disposals? Does the detailed fixed asset register provide this information?	
2.	For disposals, confirm the following: a) Sales proceeds? b) Original cost of acquisition? c) Date of acquisition? d) Asset description? To determine if the asset previously qualified for capital allowances	
3.	For additions, were: a) All assets were in use at the year end? b) Were there any grants received in respect of any additions? c) If any additions were acquired under lease agreements? If so, have copies of the agreements d) Were there any accruals of additions to the fixed assets?	
4.	Was there any goodwill amortised in the accounts?	
5.	Were there any assets not in use the previous year that have now been brought into use before the year end?	
6.	Were there any assets (apart) from disposals which ceased to be used during the year?	
7.	Was there any impairment of assets during the year?	
8.	What was the amount of Depreciation included in the Profit & Loss account?	
9.	Are there any finance leases in existence?	
10.	In respect of motor vehicles owned or leased, provide the following information: a) Make and model of each vehicle b) The vehicle's CO <sub>2</sub> emission level (to ascertain the capital allowances available/allowable lease expenses) c) Were there additions in the current year? d) Operating lease payments split by each car e) Finance lease payments split by vehicle, ensuring that the interest payments can be separately identified	

11.	Are there any buildings/structures included in additions, provide the following information: a) What is the use/function of the building/structure? E.g. a warehouse b) Does the expenditure on offices included in the building exceed 10% of the total expenditure incurred on the construction of the whole building? c) Are there any items of plant and machinery included in the total construction costs? (e.g. fixtures & fittings? items of plant?)	
12.	Are there any items included in maintenance/repairs in the profit & loss account that represent improvement or capital additions to fixed assets? Provide a breakdown of nominal codes that are named as such or include higher than normal expenditure.	
<b>Accruals/Provisions</b>		
13.	Are there any general provisions/accruals at the year end? E.g. general stock/bad debt provision, general accruals	
14.	If there any accrued bonuses/director's fees, have they been paid within six months of the year end?	
<b>Dividends</b>		
15.	Were there any dividends paid? a) What date were they paid? b) Who were they paid to? c) How much was paid?	
16.	Were any dividends received? a) What date were they received? b) Who received them? c) How much was received?	
17.	Has the dividend withholding tax return(s) being submitted to Revenue in respect of all dividends paid during the year?	
<b>Management Charges</b>		
18.	Were there any management charges paid to or received from group companies or head office?	
19.	Were there any management charges or expenses recharged to the company? Confirm that they are: a) Wholly and exclusively for the purposes of the trade? b) Commercially justifiable and at arms length?	
<b>Pensions</b>		
20.	If there is a defined contribution scheme, provide the following information: a) Total DC pension expense charged to the profit & loss b) Total employer pension contributions paid to DC scheme in the year c) Details of any special (one – off) pension contributions made in the year d) The employer pension accruals accrued at the year end	

<b>Foreign exchange gain/loss</b>	
21.	<p>If there any gains/losses in the profit &amp; loss account, answer the following questions:</p> <ul style="list-style-type: none"> <li>a) How the gain/loss arose?</li> <li>b) Is it on a trading account?</li> <li>c) Does the company lend funds in currencies other than in Euro?</li> <li>d) Does the company operate any foreign currency bank accounts? If so, specify what these funds are used for (e.g. held to match foreign currency liabilities, held on deposit or held for the purposes of the trade)</li> </ul>
<b>Interest paid</b>	
22.	<p>Provide the following:</p> <ul style="list-style-type: none"> <li>a) Interest/penalties paid for underpayment of tax</li> <li>b) Interest paid under deduction of tax in the P&amp;L</li> <li>c) Royalties (including patent royalties) specifying whether paid under deduction of tax. Specify what the royalties relate to and the split between royalties and patent royalties.</li> <li>d) Royalties (including patent royalties) accrued and unpaid at year end. Specify what the royalties relate to and the split between royalties and patent royalties.</li> <li>e) Preference dividend interest charged to the Profit &amp; loss account</li> </ul>
<b>Non-trading income</b>	
23.	<p>Has the company any of the following income sources? If so, provide the following:</p> <ul style="list-style-type: none"> <li>a) Rental income (and details of rental expenditure)</li> <li>b) Interest receivable:                             <ul style="list-style-type: none"> <li>i. Source of the income i.e. bank or other</li> <li>ii. Details of any tax deducted e.g. DIRT</li> <li>iii. DIRT Certificates</li> <li>iv. Other interest e.g. interest on refunds of tax</li> </ul> </li> <li>c) Foreign dividend income and whether any withholding tax was withheld on same</li> <li>d) Grants received, a description of the grant e.g. employment grant and specify the amount received under each grant type</li> <li>e) Any other source of non-trading income (and provide the amount of withholding tax if any)</li> </ul>

<b>Deductibility</b>	
24.	Is there any stamp duty expensed in the profit and loss account? If so, provide details.
25.	Is there any Keyman insurance paid by the company during the year? If so, provide the split between proprietary directors and employees (the expense is not deductible where it relates to proprietary directors but is if incurred for staff).
26.	Are there any medical insurance premiums (e.g. VHI) paid on behalf of any employees/directors? a) Is the amount grossed up in the accounts at the year end? (does the figures in the accounts include the tax ultimately payable by the company on these premiums). Note: This does not relate to medical insurance premiums reimbursed by employees through their payroll. b) Are they paid on behalf of employees over 50 years of age? If so, obtain a statement from the medical insurer (the credits available are different for employees in this age bracket).
27.	Is there any entertainment expenses incurred?  If so, confirm the amount that should be disallowed in respect of client entertainment. Entertainment for staff is allowable but all entertainment relating to clients in full/part is not allowable.  E.g. combined client/staff lunch is not allowed
28.	Are motor and travel expenses properly vouched and are incurred wholly and exclusively in the course of the trade?  Are mileage expenses within the Irish civil service rates?
29.	Is there a breakdown of the professional and consultancy fees, specifying what they relate to?  Confirm if any fees relate to non-trade expenses or capital items.  E.g. advice in relation to the purchase of fixed assets, shares, reorganisations etc. Fees only relating to activities of the trade are deductible.
30.	If there are subscriptions, are they all trade related?
31.	Are there any donations to eligible charities? These are only allowable where a single donation is greater than €250.
32.	Is there any sponsorship included in the accounts? If there is an advertising element to the any sponsorship expenses the expenditure is allowable.
33.	Are there any items noted during an audit which have been left an unadjusted difference? If so, provide details
34.	Confirm are all expenditure expensed to the P&L is revenue expenditure and was incurred wholly and exclusively for the purposes of the trade?



<b>Miscellaneous</b>	
35.	Are there any additions or disposals of shares in subsidiaries or related companies?
36.	Have any exceptional agreements being entered into during the year by the company or any changes to its trading circumstances?
37.	Confirm that the company has a transfer pricing policy and that all intercompany transactions take place on an arm's length basis
<b>Information for the CT1</b>	
38.	Provide the following in relation to Directors: a) Emoluments b) Pension c) Loans d) Expenses including BIK on company car, VHI etc.
39.	Are there any foreign deposit accounts held by the company? If so, provide details
40.	Are there any foreign life policies held? If so, provide details
41.	Are there any offshore funds or other offshore product held by the company? If so, provide details
42.	Are there any payments in excess of €6,000 in the accounting period to third parties for "services" rendered? If so, they should be entered onto Form 46G and submitted as the same time as the Corporation tax return. Services include fees, commissions, and payment for copyright.

# Key Reliefs Options and Conditions Guide

Practice Support + Corporate Consultants + Tax & Legal + Practice Growth + Education & Training  
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### Entrepreneurial relief

Where the conditions for entrepreneurial relief have been met, then chargeable gains on qualifying assets for disposals up to €1 million from 1 January 2016 (life time limit) are taxed at 10% as opposed to the current capital gains tax rate of 33%. Any chargeable gain in excess of €1 million is charged at a CGT rate of 33%. The conditions for revised entrepreneurial relief to apply as stated in Section 597AA TCA 1997, as applicable to individuals are as follows:

1. The claimant must be an individual who owned the chargeable business assets/shares for a continuous period of 3 years within the last 5 years (must be a wholly or mainly qualifying business for this period);
2. The chargeable business assets are assets used for the purposes of the qualifying business including goodwill which;
  - is, or is an interest in, an asset used for the purposes of a qualifying business carried on by an individual, or
  - is a holding of 5% or more of the ordinary shares in a company or is a holding company of a qualifying group and the person holding them is a qualifying person;
  - is a partnership carrying on a qualifying business.
3. In relation to goodwill, initially Section 597(2)(b) TCA states that where goodwill is disposed of directly or indirectly to a company by individuals, where, immediately following the disposal, the individual is connected with the company (a person is connected where he/she controls the company or he/she **and** a connected party controls the company. Connected party includes relatives and partners and trustees of settlements), then entrepreneurial relief does not apply. However, Section 597AA(8) TCA clarifies where there has been such a disposal, where it would be reasonable to consider that the disposal is made for bona fide commercial reasons and does not form part of any arrangement or scheme the main purpose or one of the main purposes of which is the avoidance of liability to tax ("the motive test"), then entrepreneurial relief will apply to any such transfer.
4. A qualifying business is a business other than the holding of shares and securities or other assets as investments including the holding of development land, or the development or letting of land.
5. In the case of shares, the individual must be a qualifying person – a person who has been a director or employee of the company or group of companies for 50% or more of his/her working time in a managerial or technical capacity for a consecutive period of 3 out of the 5 years prior to disposal (working time defined as being available and at the disposal of the employer and carrying out the duties of work).
6. The relief does not apply to assets personally owned outside a company which are used for the purposes of the trade in the company even if transferred at the same time and to the same person.
7. Where a group exists, each subsidiary must be owned 51% within the group and all of the subsidiaries should be carrying on wholly or mainly a qualifying business activity. If neither of these are met, then the relief does not apply.

8. Under Section 586 TCA 1997 the period of ownership of the shares and the period of directorship transfer on the transfer of the trade into a group.
  9. If the conditions for entrepreneurial relief and retirement relief apply at the same time, then the thresholds are used up simultaneously. So; if retirement relief applies for example on €750,000 and the chargeable gain would also be circa €750,000 due to a very low base cost (which would be the case here), then €750,000 of entrepreneurial relief is utilised at the same time. When taking account of marginal relief with regard to retirement relief, the point in time when it becomes more beneficial for the shareholders to claim entrepreneurial relief if it were available to him would be where the aggregate proceeds from the sale by the shareholder is above €937,500 (if the €500,000 threshold applies then it is more beneficial to claim entrepreneurial relief where the transfers to children, entrepreneurial relief will also be deemed to apply).
  10. Revenue have confirmed in their revenue manual that they will allow, by concession, entrepreneurial relief to be claimed on the liquidation of the company, as long as the company was carrying on a qualifying business up to the time the liquidator was appointed and assuming the liquidation is completed within a period of 2 years (this is why it is so important that the liquidation concludes within this 2 year period). It is important to emphasise that the liquidation option for entrepreneurial relief is only a concession and is not in the legislation, therefore if revenue wanted to question the bona-fide reasons for this it is possible to take away the concession (this contrasts with retirement relief where it is included in the legislation if the liquidator is appointed at the time of liquidation).
- Other Conditions for entrepreneurial relief (e-brief 83/16):
    - No age requirement
    - No mention of restriction of losses if a loss applies;
    - No connected party exclusion
    - Period of ownership and qualifying person criteria:
      - not broken where scheme of reconstruction/amalgamation under S.586/587 applies;
      - Broken if S.600 TCA applies (incorporation relief on transfer of sole trader to a company and S.600 claimed)
      - Does not transfer between spouses.

### Retirement relief

The conditions for retirement relief in Section 598 & 599 TCA to apply are as follows:-

1. The shareholder making the disposal must be 55 years of age or more at the date of disposal
2. The assets (including shares in a family company which is a trading company) must have been owned for a period of 10 years up to the date of disposal and if applicable used for the purposes of the trade during this period up to the date of disposal. Family Company in relation to an individual, means, a company the voting rights in which are –
  - (i) as to not less than 25 per cent, exercised by the individual, or
  - (ii) as to not less than 75 per cent, (exercisable by the individual, his or her civil partner, a member of the individual's family, or a member of the family of the civil partner of the individual), and as to not less than 10 per cent, exercisable by the individual himself or herself;
3. The consideration for the disposal (and all other similar disposals of business assets since the person reached age 55) must not exceed €750,000 (or if the individual is 66 years or over then the limit is €500,000) subject to marginal relief applying. Marginal relief applies such that tax is payable at 50% of the difference between the proceeds received and the €750,000/€500,000 limit as applicable. If by applying the normal rules with regard to calculating the CGT (assuming retirement relief did not apply) results in less tax being payable than would be payable under marginal relief then it would not be worthwhile claiming retirement relief. Usually where entrepreneurial relief also applies to the disposal, it no longer becomes beneficial to avail of marginal relief where the sales proceeds exceed €937,500 per person assuming the base cost of any chargeable assets are minimal (which applies in this case as the base cost of the goodwill is nil).

Where the disposal is to someone within the family, then if the disposer is under 66 years of age, the full consideration or deemed consideration (if it is a gift) is exempt, assuming all the conditions have been fulfilled. Where the disposer is aged 66 or more at the time of the disposal/transfer, then, for disposals while 66 years of age or more since 1 January 2014, a limit of €3,000,000 applies (note this is per disponent).

4. The company must be a wholly or mainly trading or professional company for the 10 year period.
5. In relation to goodwill, initially Section 598(1)(a)(II) TCA states that where goodwill is disposed of directly or indirectly to a company by individuals, where, immediately following the disposal, the individual is connected with the company (a person is connected where he/she controls the company or he/she and a connected party controls the company. Connected party includes relatives and partners and trustees of settlements), then retirement relief does not apply. However, Section 598(1)(f) TCA clarifies where there has been such a disposal, where it would be reasonable to consider that the disposal is made for bona fide commercial reasons and does not form part of any arrangement or scheme the main purpose or one of the main purposes of which is the avoidance of liability to tax ("the motive test"), then retirement relief will apply to any such transfer.

6. Group for the purposes of the relief is any company in the group that is owned 75% within the group.
7. In the case of shares in a family company, the shareholder must have been a director of the company for at least 10 years (not necessarily the 10 years up to the date of disposal) and must have been a full time director for at least 5 of those 10 years.

For the purposes of these conditions, the legislation sets out a definition of what is meant by full time working director. This means a director that has been required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity. The meaning of "full time" has been determined in tax cases in the Courts and is generally held to mean that somebody is required to work a normal working week (i.e. 35-40 hours per week) in that role.

However, it is important to emphasise (as already indicated above) that the conditions relating to the position of director can be met in relation to any time period since the date of incorporation of the company. While the shareholder must be able to demonstrate that the shares have been held for a period of 10 years ending with the date of disposal, the shareholder can meet the conditions of being a director for 10 years, 5 of which were as a full time working director, at any time in the period from the date of incorporation of the company up to the date of disposal.

8. In the case of shares in a family company/group,
  - (i) The amount of consideration to which retirement relief can apply is the proportion of the chargeable business assets to the chargeable assets of the company. Therefore, where chargeable non-business assets exist, then retirement relief will be diluted. A chargeable asset is an asset on which no chargeable gain would arise on the disposal by the company if a gain were to arise.
  - (ii) Where shares are disposed of in a family company/group to a child when 66 years of age or over, AND subsequently/at the same time more shares in this family company are sold to a company controlled by that Child, then the transfer to the child is taken into account when assessing the €500,000 threshold (for transfers to third parties outside the family) for retirement relief purposes.
9. Under Section 586 TCA 1997 the period of ownership of the shares and the period of directorship transfer on the transfer of the trade into a group
  - Normal conditions apply but relief also applies if just prior to the date disposal:
    - Land leased for max 25 years for a min of a 5 year period (note 5 year min period not applicable if disposal to child & where transfer to child it can be on conacre); AND
    - it was farmed up to date of entering the lease for 10 year; AND
    - other conditions for retirement relief met.
    - Land can be leased to Company, individual or partnership
    - RR applies to Single farm payment entitlement where conditions met
  - S.599 – relief on transfer to a child –
  - Items to watch:

- S.599 – clawback when €750k/€500k threshold exceeded
  - Marginal relief applies at 50% of excess above threshold
    - Possible to avoid clawback in certain instances!!
- Leasing land for < 5 years where conditions for retirement relief applied prior to entering lease & final transfer not to a child
  - Land leased on conacre & sold to a third party under S.599 – no RR applies unless disposed of before 31/12/16 unless:
    - 5 year lease put in place by 31/12/16

#### Interaction of Retirement relief & entrepreneurial relief

- Tax planning to ensure retirement & entrepreneurial relief are not used at same time

### CAT- Agricultural relief

- Must be held for 6 years from valuation date (use active farmer test) – previously date of death
- Reduces the market value by 90%
- Any costs are also reduced by 90%
- Future entitlement to a pension fund not required to be included in farmer test
- Need to include remainder interests in the farmer test calculation
- No loans attached to the properties can be taken into account in farmer test other than mortgage on principle private residence.
- Could be possible that if a type of agricultural property then can be included
- Trees & underwood – farmer test not required to be met nor is holding period
- What conditions must be met?
  - Must consist of agri property (e.g. land, farm buildings, livestock, single payment payments, P&M, forestry, farm residences, etc.)
  - Meet farmer test – value of agri assets represents 80% or more of total assets at valuation date
  - Beneficiary/lessee must meet active farmer test/trained farmer
  - Watch revenues View that you cannot lease part & farm part (TALC minutes in September 2017)
- Tax planning - ability to manage affairs to ensure meet the test before valuation date
- Cash given subject to investment in agricultural property within 2 years of the date of gift or inheritance is agricultural property
- Active farmer test
  - Hold an agri qualification (as listed in Sch 2, 2A & 2B of Stamp Duties Act) – if not held at date of valuation then must be achieved within 4 years of that date; **OR**
  - Farm the agricultural property for not less than 50% of his/her working time (active farmer); **OR**
  - Lease the land to an active farmer or to a qualified farmer on or before valuation date **OR**
  - For all 3 above it must be farmed on a commercial basis & realisation of profit



### CAT- Agricultural relief

- Normal working time (E-brief 108/14)
  - 40 hours per week including on & off farm income – therefore 20 hours per week farming
  - Note if normal working week is less than this – 50% of that may be considered
  - For occupation of woodlands 20 hours may be reduced if agreed with revenue
- If cannot meet active farmer at valuation date due to beneficiary:
  - Having existing work commitments
  - Living or working abroad
  - Full time student whose studies are not completed.
- Then given 1 year from valuation date to meet requirement
- Revenue have said will be lenient in relation to valuation date
- Small parcels of land < 2 acres not considered to be agricultural property
- Must actively farm the land OR lease agricultural property to an active farmer or trained farmer for period for 6 years commencing on valuation date; or
- Can be a number of leases making up the 6 year period with parts of property leased to different parties
- Note Capital Tax TALC meeting in September 2017 – Revenue believe you must either farm it or lease it – you can't do both. **NB**
- Can initially farm and then lease within 6 years & vice versa
- Can lease to a company whose main shareholder & working director farms the agricultural property on behalf of the company
- Where company owned 50/50 husband and wife & one satisfies the requirements - relief applies
- Lease must be in place at valuation date (however likely to be lenient)

### **CAT- Agricultural relief**

- If agricultural property includes:
  - farm dwelling house and land is leased to active/trained farmer & house retained as only or main residence –
    - Agri relief permitted on the house also
  - plant & machinery and/or livestock/and/or farm house and land is only leased to active/trained farmer & land makes up at least 75% of property value and only leases land –
    - Agri relief permitted on plant & machinery and/or livestock
- If lease terminated/surrendered –1 year given to get another lessee
- Ensure lease stipulates that lessee must:
  - be a qualified farmer and produce qualification AND/OR
  - meet the active farmer requirements; AND
  - if not lease can be terminated immediately

### **Clawback**

- Relief clawed back if disposed of within 6 yrs from date of gift/inheritance & not reinvested within one year or within 6 yrs if CPO
- No clawback on crops or trees
- If development land
  - clawback of development portion where disposed of between 6-10 yrs
  - no ability for reinvestment
- Clawback based on proceeds not reinvested net of any CGT paid
- If gifted and no proceeds then no clawback
- Land purchased from spouse does not prevent clawback;
- Finance Act 2017 permits the leasing of agri land for the use of solar energy will qualify for CGT and CAT reliefs (RR & AR) if 50% or less of lease land is used for purpose (effective 1 Jan 18)

### CAT-Business Asset Relief

- What conditions must be met?
  - A sole trader business or partnership business must be transferred
  - It is an investment in unquoted shares when at the valuation date after taking the gift or inheritance, beneficiary:
    - Controls 25% of the voting power; or
    - Owns 10% or more of issued share capital of the Company & has worked as a full time employee for the Company or group in a managerial or technical capacity; or
    - Controls the company with his/her family as defined in Section 27 of CATCA
- Transferor must have owned the shares and land (where land owned by the shareholder is used for the purposes of the trade)/ business (where sole trader) for 2 years for inheritance and 5 years for a gift
- Cannot be a Company that deals wholly or mainly in currencies, securities, stocks or shares, land or buildings, or making or holding investments
- Note land with solar panels on them do not attract the relief
- Land and buildings leased to the Co and used for the purposes of trade qualify if transferred at:
  - same time, and
  - to the same person as the shares in the Co is transferred to; and
  - the owners of the land and buildings own >50% of voting rights of the Company (spouses looked at together)
    - Watch this if part disposals occurring
- Non-business assets (e.g. investments/excess cash) do not qualify for business relief – hence that portion of value of shares will not qualify (if it is a company)
- Drawbacks when compared to Agri relief:
  - needs to be a business compared to Agri relief where does not need to be;
  - no ability for dwelling house to qualify however Agri relief does
  - must actively carry on the business – Agri relief you can carry it on or lease it

Further details:

Relevant business property as set out in s93(1) CATCA 2003 is any of the following;

- a) property consisting of a business or interest in a business (which would include a sole trader business or a partnership).

The business as defined by s90 CATCA 2003 must be carried on with the intention of making a gain and may include businesses carried on in the exercise of a profession or vocation.

It should be noted that while assets such as land, plant & machinery and buildings may qualify as relevant business property, this will only be the case where they are transferred as part of an actual business they are used in, and not where they are simply transferred as individual assets.

- b) Shares or securities in an unquoted company, Irish or otherwise incorporated, and where on the valuation date after taking the benefit, the beneficiary owns more than 25% of the voting powers on all questions affecting the company as a whole.
- c) Shares or securities in an unquoted company, Irish or otherwise incorporated, and where on the valuation date after taking the benefit, the beneficiary along with certain other persons controls the company within the meaning of s27 CATCA 2003 (i.e. owns more than 50% of the company).
- d) Shares or securities in an unquoted company, Irish or otherwise incorporated, and where on the valuation date after taking the benefit, the beneficiary owns at least 10% or more of the aggregate nominal value of the entire share capital and securities of the company and the beneficiary has been a fulltime working officer or employee of the company (or if that company is a member of a group, of one or more companies which are members of the group), throughout the period of 5 years ending on the date of the gift or inheritance.
- e) any land or building, machinery or plant which, immediately before the gift or inheritance, was used wholly or mainly for the purposes of a business carried on by a company of which the disponent then had control, or by a partnership of which the disponent then was a partner and for the purposes of this paragraph a person is deemed to have control of a company at any time if that person, or that person and his or her spouse or civil partner, then had control of powers of voting on all questions affecting the company as a whole which if exercised would have yielded a majority of the votes capable of being exercised on all such questions.
- f) quoted shares in or securities of a company which would have qualified for the relief if:
  - they had of been unquoted shares would be shares or securities, and
  - were in the beneficial ownership of the disponent immediately prior to the disposition and
  - were unquoted at the date of the commencement of that beneficial ownership or at 23 May 1994, whichever is the later date.

With regards to subsection (1)(e) any land, building, machinery or plant will only be relevant business property where they are transferred by the same donor at the same time of a gift/inheritance of relevant business assets to the same beneficiary.

#### Specifically excluded assets

Where a business or interest in a business or shares in or securities of a company relate wholly or mainly to:

- a) dealing in currencies, stocks or shares, securities, land or buildings
- b) or the making or holding of investments

it is excluded from being considered “relevant business property” in accordance with s93(3) CATCA 2003, and no part of that business will qualify for business relief.

If the business does not wholly or mainly conduct ‘excluded’ business as detailed at (a) and (b) then it will be considered relevant business property, however relief will still only apply to those parts of the business that would not be considered ‘excluded’.

The following points would be considered in deciding whether the business is an investment business or not:

- the ratio of asset value and profit attributable to both the trading and the investment assets
- the ratio of turnover to investment income
- the division of time spent by employees in both the trade and investment sides of the business
- the description of the business as stated in the annual accounts
- whether the investment income or profits are allocated to the trading part of the business or not
- any reasons for low trading profits

As per s93(4) CATCA 2003 holding companies can qualify for business relief if their subsidiaries do not engage in the excluded business activities at (a) and (b) above.

#### Business relief - Minimum period of ownership

In accordance with s94 CATCA 2003 in order to be considered relevant business property, it must have comprised a part of the disposition continuously -

(a) in the case of an inheritance, which is taken on the date of death of the disponer, for a period of 2 years immediately prior to the date of the inheritance, or

(b) in any other case, for a period of 5 years immediately prior to the date of the gift or inheritance

Where in the period immediately before the date of disposition the property was continuously in the ownership of the disponer’s spouse/civil partner or by a trustee, that period may be used to satisfy the minimum ownership period of the disponer.

#### Business relief - Replacement property

As set out by s95 CATCA 2003 where relevant business property was replaced within the minimum ownership period, it will be treated as complying with the requirements of s94 CATCA 2003 where the replaced property would itself have qualified as relevant business property (apart from the s94 CATCA 2003 requirement) in the event of a gift or inheritance.

A further requirement is that the prior and current relevant business property must have been owned in aggregation for at least 2 of the 3 years immediately prior to the date of an inheritance or 5 of the 6 years immediately prior to date of a gift

#### Business Relief - Withdrawal of the relief

In accordance with s101(2) CATCA 2003, where the relevant business property (or any part of) ceases to be such, or is sold, redeemed or compulsorily acquires and not replaced within the relevant period, which s101(1) defines as 6 years commencing the date of the gift or inheritance,

then the 90% reduction shall not apply. The liability to CAT that arose at the time of the benefit would need to be re-calculated as if the disposed of assets had been non-business assets.

In the event that development land made up any part of the gift or inheritance, then the clawback period relating to such is extended to 10 years from the date of inheritance.

