

Corporation Tax: mandatory online filing and the end of a company's life

Summary

Companies tend to have trouble producing full Company Tax Returns at the end of their lives. They face further specific problems during any form of formal 'winding up' and the move to mandatory online filing brings these issues into sharp focus. For this reason, insolvent companies in any form of formal winding up or administration procedure are exempted from the requirement to file online. But that exemption does not apply to companies moving towards informal striking off or during a solvent Members' Voluntary Liquidation (MVL).

These cases present some practical difficulties. This guidance sets out the issues and gives detailed guidance about the approach that HM Revenue & Customs (HMRC) will take in dealing with them.

Background context - mandatory online filing

A company must deliver a Company Tax Return to HMRC if it receives a 'notice' to do so (Finance Act 1998, Schedule 18 Paragraph 3).

The notice is contained in form CT603 which HMRC issues automatically to every company which they believe to be active. It is this notice which defines the required content of a Company Tax Return. In particular, the notice requires the return to include 'a copy of the accounts of the company for the period covered by the return and computations showing how the specified information (that is, the entries on the Company Tax Return form CT600) has been calculated from the relevant figures in the accounts'.

The meaning of 'accounts' is defined at length in the notice. For a normal UK resident company, it means the company's 'individual accounts' which it is required to prepare under S394 of Companies Act 2006.

From 1 April 2011, nearly all Company Tax Returns for periods ending after 31 March 2010 have to be delivered to HMRC online. You will find more information on this - including the secondary legislation (Regulations and Board's Directions) - on the HMRC website.

[More about Corporation Tax online filing and electronic payment](#)

Insolvent company exemptions from online filing

There is a legal exemption for insolvent companies - companies do not have to deliver their Company Tax Returns online if they are subject to a winding up order or are in formal administration or administrative receivership. This legal exemption also extends to creditors' voluntary liquidations, company voluntary arrangements and provisional arrangements under a court order. The full details are set out in Regulation 3(10) and (10A) of the Income and Corporation Taxes (Electronic Communications) Regulations 2003, inserted by Statutory Instruments made in December 2009 and December 2010.

You can find the full texts of the various Statutory Instruments on the HMRC website.

[Corporation Tax online filing and electronic payment](#)

So, once any of these forms of legal process is in effect, the insolvent company can choose whether to deliver its return online or on paper.

This exemption applies in relation to any return, for any period, while the company is subject to the formal insolvent winding up procedure. So it applies to any outstanding Company Tax Returns for periods before the commencement of the winding up and appointment of the insolvency Practitioner (IP) as well as to periods within the period of the winding up procedure.

This legal exemption of insolvent companies from mandatory online filing means that we can and will continue the practice of accepting an 'informal return' from liquidators, for any period, as set out in the Company Taxation Manual.

[Read more about the legal exemption of insolvent companies](#)

Example:

Belly Up Ltd is insolvent and has not prepared formal Companies Act individual accounts or delivered outstanding Company Tax Returns for periods before the commencement of the winding up or within the period of the winding up procedure.

HMRC will accept formal returns online or on paper, or informal returns on paper for any of those periods.

Solvent companies - informal dissolution and MVL

The exemption does not apply to solvent dissolutions where the company seeks informal striking-off or enters a MVL. There may be particular risks as a result of the cessation and striking off which need consideration, so a full Company Tax Return may be essential.

So HMRC's starting point has to be that the normal filing requirements for a solvent company apply to the return for any period for which HMRC issue a 'notice to deliver a Company Tax Return' even in an MVL where an IP has been appointed. By law, HMRC require a full Company Tax Return online in accordance with the requirements of the notice for that period.

However, these cases present practical difficulties which the following guidance addresses.

The basic proposition for solvent companies

An accounting period of the company ends when it ceases to trade or ceases to be within the charge to Corporation Tax. In the case of an MVL, an accounting period also ends immediately before the winding up starts. So there will nearly always be a final accounting period, running from the day after the end of the last normal accounting period and ending with the last day of trading or the day before the commencement of the liquidation. This is referred to below as the 'stub period'.

Typically, HMRC is made aware of the cessation and intention to seek striking off at a point when the notice for the last normal accounting period has been issued. In such cases, in principle the company must comply with the requirements of the notice and deliver a full Company Tax Return for that period, including the Companies Act individual accounts and tax computations both tagged in eXtensible Business Reporting Language (XBRL).

Example

Ready2Retire Ltd is solvent and the directors want to close down the business and settle in Spain.

- the company's normal accounting date is 31 December
- the CT603 notice to deliver a return for accounting period ending 31 December 2010 is issued in January 2011
- the company ceases activity on 1 April 2011 and it notifies HMRC that it intends to seek voluntary striking off
- the issued notice requires the company to deliver a full Company Tax Return for the last normal accounting period to 31 December 2010, including Companies Act individual accounts and tax computations both tagged in XBRL, online

In such cases, HMRC will insist on a full online Company Tax Return for any accounting period for which the return will be due before the date of striking off.

Practical situations - how HMRC will deal with cases

Agreeing figures before the filing date to allow striking-off or liquidation

A company will often ask HMRC to agree to its striking off before the statutory filing date for the return for the last normal accounting period - that is, at a time when that return is still not legally due. HMRC will also then need to agree the position for the stub period following the last normal accounting period up to the proposed date of striking off or commencement of liquidation. Obviously no notice will have been issued requiring a return for that period.

In such cases HMRC will only normally insist on a full online Company Tax Return - and object to the striking off until they receive it - where there are reasonable grounds for considering that there is a risk of tax loss, if they do not have the opportunity to review a full Company Tax Return.

Where HMRC doesn't think there is a material risk of loss of tax, they will seek to agree the tax liability of the company for the last outstanding accounting period, as well as for the stub period, on the basis of management accounts or similar financial statements and tax calculations based on them, if the company asks HMRC to do so.

Please note: the information delivered as a basis for settling the tax affairs of the company in order to permit striking off **is not** a Company Tax Return. So HMRC can't enquire into it. Neither is the online return filing service designed for such cases. In practice, if a company does file such documentation using the online filing service and the information processes successfully, HMRC will normally accept the position but it will remain the case that no Company Tax Return has been filed.

HMRC will also accept the relevant information on paper or by other agreed means provided it meets their needs.

Example:

Frugal Ltd wants to wind up as quickly and cheaply as possible.

- the company's normal accounting date is 31 December
- it approaches HMRC in May 2012 asking whether we will agree to the company being struck off on 30 September 2012

At that point:

- the company's return for its last normal accounting period to 31 December 2011 isn't yet due (notice issued January 2012, statutory filing date 31 December 2012)
- there will be a stub period from 1 January 2012 to 30 September 2012 for which no CT603 notice to deliver a return has been issued

HMRC:

- reviews the request and is satisfied that there is no material risk of tax loss requiring sight of full Company Tax Returns
- agrees to settle the tax liability of the company for the last outstanding accounting period, as well as for the stub period, on the basis of tax calculations based on management accounts, which the company provides on paper by post
- processes the relevant tax figures as a basis for settling the tax position

If in practice the striking off is delayed and does not take effect until after the filing date for the last normal accounting period, HMRC will only object to the striking off and require a company tax return if there are material tax risks.

Where the return for the last normal accounting period will be due before the likely striking off date

The company must comply with the requirements of the notice and deliver a full online Company Tax Return for that period, including the Companies Act individual accounts and tax computations both tagged in XBRL. If it fails to do so, it incurs the normal penalties for non-filing. HMRC will maintain that line in relation to informal striking off cases. However, there are particular considerations in relation to MVLs.

Once the liquidation commences, liquidators are under no statutory requirement to prepare full Companies Act accounts for these periods.

The Companies Act does not remove the obligation on the company to prepare company individual accounts under S394, but in practice that requirement is not enforced. For tax purposes, the IP becomes the proper officer of the company and the only person through whom the company can act under the Taxes Acts.

So if the statutory accounts have not been prepared before commencement of the liquidation, the IP is unable to comply in full with the notice as they will not be able to deliver the accounts element of the return. It follows that the computations required by the notice cannot be produced either, as the starting point for them would be a set of accounts which does not exist. Consequently, neither of the two elements of the return which are normally required to be delivered in iXBRL format will be available.

That does not remove the obligation to file online. However, Regulation 3(8) requires HMRC to accept that the filing requirement has been complied with if contraventions or failures to

comply with the required form do not undermine the purpose of universal online filing and are necessary in order to deliver the return by the filing date.

So where it is impossible for an IP to deliver normal accounts and computations, HMRC can accept something which falls short of that requirement of the notice.

- The IP must deliver an online return.
- If they do not have appropriate commercial software, they should normally be able to use the free HMRC online filing software available on the HMRC website.
- They will need to complete the relevant boxes of the CT600 return form element. But instead of using the accounts and computations templates in the product, they should tick the box saying there are no accounts and computations attached, and attach one or more PDF documents providing the relevant draft accounts or financial reports and a calculation of any Corporation Tax payable, showing the derivation of the self-assessment in the CT600 from the financial statements provided.

There may be some cases where the structure of the CT600 element of the HMRC free product is not well tailored to the specific needs of a case. HMRC will normally be able to be flexible about that, provided the tax payable is correct.

Such a return will process through the online filing service. It is a satisfactory Company Tax Return and can be enquired into. HMRC will accept it as discharging the filing obligation, subject to risk assessment of the tax charge and enquiry if appropriate.

Dealing with outstanding earlier periods

The requirement to file online should be met wherever HMRC requires a full Company Tax Return. HMRC will expect full online XBRL-tagged Company Tax Returns in relation to normal accounting periods for which the filing date has passed.

So if there are accounting periods for which the Company Tax Return is outstanding and the filing date has passed at the time that the striking off is proposed or the MVL commences, there are no grounds for accepting anything less than a full online Company Tax Return as discharging the filing obligation.

In the case of an MVL, the IP may not be able to supply a full Company Tax Return for such a period depending upon what accounts preparation work has been done and the situation may be beyond their control. HMRC will still make the appropriate tax determinations for such periods and apply the relevant penalties for non-filing. These should be paid by the liquidator as debts to be discharged during the liquidation.

It is in the best interests of all parties for the IP to ensure that HMRC has the best available information on which to base such determinations, and that the tax is paid on time to avoid the possibility of tax-related penalties. HMRC will normally expect the IP to be able to provide detailed management accounts and a tax computation based on those accounts. HMRC will review this information critically and apply normal risk assessment considerations to it. If they are satisfied, they will make the determination in accordance with the computations supplied by the IP. If they are not satisfied, they will make a determination the best of their information and belief.

This information is not a Company Tax Return, so it should not be delivered online and the online filing service has not been built to allow its delivery.