

OUT OF CONTRACT

If you wish to cease using your company, due to a permanent post, retirement, ill health, etc, then there are various choices to consider.

On hold

If the cessation of contracting is temporary then the company can just be left ticking over for a few months with no major implications – make sure that matters such as VAT and tax payments are attended to though. By law however the company does not qualify as “dormant” at this time - the phrase “dormant company” is often abused, but under the Companies Act only applies where the company has no accounting transactions in a complete financial year.

With regard to our fees, if your company has no trading income for three months then after three months our fees reduce to half the normal monthly amount – this reduction must be applied for at the time and cannot be given retrospectively. As we collect payments by standing order rather than direct debit, we cannot control the payment to us, so you must contact your bank to make the necessary changes.

Dormant

If the period of inactivity is a bit longer then the company may become dormant.

This would not normally be until the end of the financial year after you ceased generating income – eg if you stopped using the company in September 2003, and it had a March year end, then dormancy could be achieved from 1 April 2005 onwards – 2003/04 will not be dormant as the company was still trading, and in 2004/05 there are tax bills to settle for the previous year.

Where a company does become dormant then Garbetts accountancy costs reduce to £10 + vat a month (excluding personal taxation). The company is capable of easy resurrection at the appropriate time. Full year end accounts and returns will be needed for the year in which the company becomes dormant and the following year.

Dormancy can only apply where the company has no significant accounting transactions, which in practice means the bank account must be closed down before the start of the financial year for which dormancy starts.

Dormancy can only apply to complete financial years.

Strike off

If you wish to cease using the company permanently then the cheapest way to “kill” the company is by having it struck off under S1003 Companies Act (formerly S652). You will need to have a final set of accounts prepared and agreed, and pay all tax due, and then an application can be made using form DS01 at a cost of £10.

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When having a company struck off there is a choice between drawing any residual funds by dividend/salary or by a capital payment under HMRC ESC C16 – the latter allows residual funds to be treated as a capital payment and thus subject to Capital Gains Tax. Under the Capital Gains Tax regime the first £10,100 of the gain is free of tax and the remainder is taxed at 18%. Bearing in mind that the profits would have been subject to Corporation Tax already the effective rate is 21% + 18% = 39%. A basic rate taxpayer is likely to be better off drawing a dividend, whereas for a Higher Rate Tax payer 39% is broadly the same as 40% personal tax.

At the time of writing it is unclear whether the new “Entrepreneurs relief” will apply to gains on closing a company; if it does then it substitutes 10% for 18% which would mean Capital Gains Tax treatment has an effective rate of 31% compared to 40% on dividends for a Higher Rate taxpayer, meaning a Higher Rate tax payer would be better off under the Capital Gains route. The eligibility for Entrepreneurs relief will doubtless be clarified over time.

The favourable Business Asset Taper Relief (BATR) regime, which allowed 75% of retained profit to escape any tax other than the basic 19% Corporation Tax already paid, is abolished from 5 April 2008.

Strike off takes around 3 to 4 months to happen after application to Companies House – most of this time is a statutory waiting period for objections. Bank accounts are frozen on strike off and their contents revert to the crown, so they must be closed after final taxes have been paid. Assets such as computers, desks, etc, normally revert to the directors on strike off as their value will be minimal.

When a company is struck off Garbetts regular fees are charged on a pro-rata basis for the current financial year, subject to a minimum of six months charges.

Additionally we may charge a fixed fee of £150+vat for dealing with the documentation and advice when ESC C16 is being used and part of the Companies funds taken as capital.

A word of caution: if you are hoping to demonstrate you are outside of IR35 then having the company struck off at the first opportunity when you return to permanent work or have a short spell out of contract may not help in demonstrating that you are a genuine business. If you anticipate that you may return to contracting within 1 to 2 years then it would probably pay to leave the company alive.

To arrange closure and strike off, the procedure is:

1. Raise final invoices to customers, and obtain payment
2. Clear all creditors and monies owed, other than taxes
3. Apply to HMRC for vat de-registration using form VAT 7
4. Forward your final quarters/year to date paper work to us
5. We will prepare final accounts, and advise tax liabilities thereon
6. Settle tax liabilities – they are due immediately if the company is being struck off
7. Close business bank account; transfer all funds to private account (it is important this is done as soon as possible after trading ceases – do not leave money in the business account for any longer than necessary)
8. Submit form DS01 to Companies House with a £10 cheque
9. There is a waiting period of three months under law, and then the company will be struck off unless there have been any objections in the interim.

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Please note – having the company struck off does not eliminate IR35 risks – these are personal rather than corporate.

NB do not apply for strike off before the final accounts are prepared or the bank account closed – you could find your company funds frozen and reverting to the crown.

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