# What was Extra-Statutory Concession C16 and how does its replacement (Section 1030A Corporation Tax Act 2010) work?

Extra-Statutory Concession (ESC) C16 was a concession granted by HM Revenue & Customs, that allowed the directors of a company to effectively wind up a solvent company themselves without appointing a liquidator and pass the surplus funds to the shareholders as capital receipts rather than dividends. This had the dual benefits of a likely lower tax charge on the shareholders (capital gains tax rather than income tax, especially if Entrepreneurs Relief applied), and also avoiding the costs of appointing a liquidator.

In 2005 the House of Lords determined that HMRC's discretion to offer ESCs was limited, and as a result ESCs have on an ongoing basis either been scrapped or incorporated into legislation. On 1 March 2012 the Enactment of Extra-Statutory Concessions Order 2012 came into force putting ESC C16 onto a legislative, if restrictive, basis. Article 16 of the Order inserts Sections 1030A and 1030B into the Corporation Tax Act 2010. What this means is that "ESC C16" relief is no longer a concession that needs to be applied for, it is automatic under the new legislation, with a £25,000 cap on the total amount that can be distributed in anticipation of company dissolution for capital, rather than income, treatment of distributions, to be applied. The new legislation is not without problems of interpretation though, as explained below.

The wording of these two new sections is as follows:

***Distributions prior to dissolution of company***

***1030A Distributions in respect of share capital prior to dissolution of company***

*(1) This section applies where - (a) the procedure in Section 1000 of the Companies Act 2006 (power to strike off company not carrying on business or in operation) has been commenced in relation to a company, and (b) the company makes a distribution in respect of share capital in anticipation of its dissolution under that section.*
*(2) This section also applies where - (a) a company intends to make, or has made, an application under Section 1003 of that Act (striking off on application by company), and (b) the company makes a distribution in respect of share capital in anticipation of its dissolution under that section.*
*(3) The distribution is not a distribution of a company for the purposes of the Corporation Tax Acts if conditions A and B are met (but see Section 1030B).*
*(4) Condition A is that, at the time of the distribution, the company - (a) intends to secure, or has secured, the payment of any sums due to the company, and (b) intends to satisfy, or has satisfied, any debts or liabilities of the company.*
*(5) Condition B is that - (a) the amount of the distribution, or (b) in a case where the company makes more than one distribution falling within subsection (1) (b) or (2) (b), the total amount of the distributions, does not exceed £25,000.*
*(6) In the case of a company incorporated in a territory outside the United Kingdom, any reference in subsection (1) or (2) to a section of the Companies Act 2006 is to be read as a reference to any provision of the law of that territory corresponding to that section.*

***1030B Section 1030A: effect of company not being dissolved, etc***

*(1) Where this section applies, a distribution made by a company is to be treated for the purposes of the Corporation Tax Acts as if Section 1030A (3) had never applied to it.*
*(2) This section applies where 2 years have passed since the making of the distribution and - (a) the company has not been dissolved during that time, or (b) the company has failed - (i) to secure, so far as is reasonably practicable, the payment of all sums due to the company, or (ii) to satisfy all of its debts and liabilities.*
*(3) In a case where this section applies, all such adjustments as are required in order to give effect to subsection (1) are to be made, whether by the making of assessments or otherwise.*

Reading the wording carefully, one can see that distributions made in anticipation of dissolution of the company will not count as "distributions" i.e. dividends subject to dividend tax, if the total amount of the distributions does not exceed £25,000. The moment that distributions under this section exceed £25,000, **all of the distributions** will count as dividends, leading to an additional tax liability for higher-rate taxpayers. What if, though, a company distributed all but £25,000 as ordinary dividends, then applied to Companies House for dissolution, and distributed the remaining £25,000 as capital receipts under this new section ? HMRC could argue that the **intent** to make an application under subsection 2 of Section 1030A to strike off the company pre-dated the actual application to dissolve the company, therefore the amount of any prior dividends should be taken into account when determining whether the £25,000 limit has been breached. This will no doubt lead to many questions of intent being resolved in the Tribunal. While HMRC could reasonably expect to allow dividends paid from trading profits of a going concern business not to be counted towards the £25,000 limit, if a company were to sell its fixed assets, remaining stock and goodwill such that it was left with only cash in the Bank prior to application for dissolution, it's pretty obvious that intent would be inferred as having existed at least from the date of sale irrespective of the actual date of application for striking off. Also, in the event of a company having surplus cash not needed for day-to-day trading requirements i.e. accumulated profits having simply been left in the company, HMRC would probably view the distribution of surplus cash as counting towards the £25,000 limit. Each case would need to be determined on its own facts.

The safe way to ensure capital treatment of distributions without limit is for the company to be placed into Members' Voluntary Liquidation. It is expected that for shareholders who are higher-rate taxpayers and who would therefore have an additional dividend tax liability to pay, it will be tax advantageous for any company not falling within the £25,000 limit above to be placed into Members' Voluntary Liquidation. However, while this looks attractive at first sight there are substantial (in excess of £2,000) costs for this route to liquidation which must be carried out by a Licensed Insolvency Practitioner.