

## **Gibson Booth Business Solutions & Insolvency**

### **The End of ESC C16 from 1 March 2012**

ESC C16 has been removed and replaced with a new more restrictive Statutory Instrument.

The current Extra-Statutory Concession C16 is a concession which is granted by HM Revenue & Customs ('HMR&C') and deals with the tax aspects of a distribution from a company.

This allows the Directors of a company to dissolve a solvent company and distribute the surplus funds to the shareholders themselves without the need of placing it into Members' Voluntary Liquidation (MVL)

Those distributions made would be as a capital receipt rather than a dividend and have the tax advantage that it is subject to capital gains tax rather than income tax.

The applications for the concession are made to HMR&C and they will only be agreed to if all tax affairs are in order and HMR&C are satisfied that the concession is not being used to confer an undue tax advantage.

### **Decision to legislate ESC C16**

In December 2011, the Government made the decision to legislate ESC C16 in the Enactment of Extra-Statutory Concessions Order 2012.

With effect from 1 March 2012, the current ESC C16 rules changed to limit distributions which attract capital treatment to £25,000 on the dissolution of a company.

Should total distributions exceed the £25,000 limit, then distributions will be treated as a **dividend income** (this attracts Income Tax Rates of Tax).

The Treasury Solicitor also advised that as of 14 October 2011, the £4,000 minimum limit for recovering unlawful distributions upon the dissolution of a company would not be enforced. The Treasury Solicitor will no longer pursue any such distribution.

**Shareholders should therefore place their company into a Members  
Voluntary Liquidation ('MVL') (A solvent Liquidation)**

Should the company enter into an MVL, no £25,000 limit will apply and distributions will be treated as a capital receipt. (Therefore subject to Capital Gains Tax rates, which includes entrepreneurial relief at 10%).

Unfortunately, if a company has received ESC C16 clearance from HMRC, all of the distributions must be made prior to 1 March 2012 to avoid the £25,000 limit. It is not enough to just simply receive clearance prior to that date.

After 1 March 2012, a company with more than £25,000 to distribute may be placed into an MVL if the shareholders wish to limit the income treatment of distributions. (ie. Income v Capital Gains).

We would advise you that specific tax advice should be taken to recommend the appropriate solution for your own circumstances. We are not tax advisors but provide the delivery of an MVL in accordance with tax advice.

**Please do not hesitate to contact E C Wetton on 01226 215999 or email [ecw@gibsonboothinsol.com](mailto:ecw@gibsonboothinsol.com) should you wish to discuss the above.**

Please also on our website go to – 'Our Services – Members Voluntary Liquidations' for more information.