

HMRC internal manual

Capital Gains Manual

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CG65745 - Transfer of a business to a company: computation: transfer of liabilities

The transferor is not required to transfer business liabilities to the company but often does so. This is normally done in practice by the company giving the transferor an indemnity in respect of those liabilities.

In strictness, business liabilities taken over by the company represent additional consideration for the transfer and relief under TCGA92/S162 should be restricted. However, ESC/D32 enables any business liabilities taken over by the company to be ignored when quantifying 'other consideration' in recognition of the fact that the transferor is not receiving cash to meet any tax liabilities on the transfer and that the shares in the company are worth less than if the business had been transferred unfettered by liabilities.

ESC/D32

“Where liabilities are taken over by a company on the transfer of a business to the company, the Revenue are prepared for the purposes of the ‘rollover’ provision in TCGA 1992 s 162, not to treat such liabilities as consideration. If therefore the other conditions of s 162 are satisfied, no capital gain arises on the transfer. Relief under s 162 is not precluded by the fact that some or all of the liabilities of the business are not taken over by the company.”

The concession applies only to business liabilities. Personal liabilities of the transferor taken over by the company should always be treated as part of the consideration. In particular any tax liability arising from the business transferred is a personal liability.

The concession applies only for the purpose of establishing the extent of 'other consideration'. It does not operate in the computation of the net cost of the shares, see [CG65740 \(https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg65740\)](https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg65740).

The general caveat that a concession will not be given in any case where an attempt is made to use it for tax avoidance should be borne in mind.



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