



HM Revenue & Customs

Information Rights Unit

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By email: [REDACTED]

Email foi.request@hmrc.gov.uk

Web www.gov.uk

Date: [REDACTED]

Our ref: FOI2025/140496

Dear [REDACTED]

Freedom of Information Act 2000 (FOIA)

Thank you for your request, which was received on [REDACTED] for the following information:

“Please see Minutes of the 14th May 2025 meeting attached.

These are publicly available.

Please provide me with the draft guidance on ESC D32 referred to in section 2 para 1, action points 72 and 75”

Our response

HMRC regularly reviews the technical guidance it provides to its caseworkers in its manuals. It was identified that HMRC's guidance in the Capital Gains manual at CG65745 – Transfer of a business to a company: computation: transfer of liabilities – may not have kept pace with modern commercial practices regarding the transfer of liabilities. HMRC has therefore drafted an updated version of this guidance. This was shared on 13 May 2025 with interested parties who participate in the Capital Taxes Liaison Group to seek their views on whether this updated version will provide clarity where a customer has used modern commercial practices. This draft is attached in response to your request.

HMRC has received feedback on the draft guidance and will be making amendments to the draft to reflect that feedback. The final version of the guidance will be published on GOV.UK to replace the existing HMRC guidance which can be found at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg65745>. It isn't possible at this time to state when the updated guidance will be published. The currently published guidance remains in place for the time being.

If you are not satisfied with our reply, you may request a review within 40 working days of receiving this letter by emailing informationrightsunit@hmrc.gov.uk or by writing to our address at the top.

If you are not content with the outcome of an internal review you can [complain to the Information Commissioner's Office](#).

Yours sincerely,

If you need extra support, for example if you have a disability, a mental health condition, or do not speak English/Welsh, go to www.gov.uk and search for 'get help from HMRC'.

Text Relay service prefix number – 18001

OFFICIAL

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

As well as taking over the assets of the business, the company may also take over the business's outstanding liabilities to creditors. In strictness, the company taking over the business's outstanding liabilities to creditors is part of the consideration given by the company for the business. Because this consideration takes a form other than shares, relief under [section 162](#) of the Taxation of Chargeable Gains Act 1992 should be restricted. However, [Extra Statutory Concession](#) (ESC) D32 enables any business liabilities taken over by the company to be ignored when quantifying 'other consideration'. This is 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.

When determining whether a company has 'taken over' business liabilities, it is necessary to consider the facts. Some of the more common approaches used in business transfers are covered below.

- A debt agreement may allow the original debtor to be replaced by a substitute debtor, who takes on the original debtor's liabilities. Where the transferor is the original debtor, and as part of a business transfer the transferor is substituted for the company in accordance with a 'substitution of debtor' clause, you can accept the company has taken on the liability for the purposes of ESC D32.
- In English & Welsh law it isn't possible for a debtor to assign or transfer their debt to another party. Instead, the original debt is novated and a new debt is taken on by the company. Where this has happened and the debt is the same amount immediately before and immediately after the business is transferred then you can accept the liability has been taken on by the company for the purposes of ESC D32.
- The company gives an indemnity to the transferor in respect of the business liability. Where the indemnity given fully covers the transferee's liability but goes no further, you can accept the liability has been taken on by the company for the purposes of ESC D32.

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 being 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](#).

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.