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Another blow to ESC16

Informal winding-up made more difficult

When solvent companies have ceased trading, they often want to distribute their assets without the expense of a formal members' voluntary winding-up.

The Treasury Solicitor's office has [announced](#) that it is withdrawing its [BVC17 guidelines](#) from 14 October 2011. The guidelines said that the Crown would not seek to recover share capital distributed to shareholders before a company's dissolution if the company has been struck off, the shareholders had taken advantage of HMRC's extra-statutory concession C16, and the amount of the distribution was £4,000 or less.

HMRC's concession C16¹ allows companies to be struck off the register under the Companies Act² without a formal winding-up, whilst treating the distribution of assets as a tax-free distribution in a winding-up rather than a taxable dividend. But returning the share capital, share premium account or capital redemption reserve to shareholders is an unlawful reduction of capital for company law purposes, and the company has the right to recover it. When the company is struck off, its property, including the right of recovery, vests in the Crown (or the Duchy of Cornwall or Duchy of Lancaster) as *bona vacantia*³. The Crown does not routinely pursue all these cases, but the risk is there, and it makes it difficult for professionals to recommend this route.

¹ <http://www.hmrc.gov.uk/specialist/esc.pdf> at page 62, likely to be replaced by legislation following a [recent consultation](#)

² [Companies Act 2006 sections 1000 et seq](#)

³ [Section 1012 Companies Act 2006](#). *Bona vacantia* means "ownerless goods"

Under the BVC17 guidelines, it was safe to proceed if the amount involved was less than £4,000. The fact that the guidelines are being withdrawn suggests that some cases involving less than that amount may be pursued in future.

The justification given is that the Companies Act 2006 procedure for reduction of capital out of court can be used instead. That is true: the new reduction procedure is extremely flexible and useful, but it does involve some documents and professional costs. It needs both a special resolution and a declaration of solvency by the directors. I have done many reductions of capital under the old and new procedures, and the new ones are far easier and cheaper, but there is still a cost involved. This is more cost and formality for small businesses, at a time when the Government is supposed to be reducing it.

There has already been some speculation that the usefulness of ESC C16 was ending⁴, and this could be a further nail in the coffin. Perhaps IP's and accountants advising on striking off businesses under C16 should equip themselves with a set of legal documents to enable them to carry out reductions of capital without a large increase in costs.

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⁴ See this [AccountingWeb article](#)