

Loans to participators, etc. CTA76 s98(1) to (7) and (9); FA83 s35 438.—(1) (a) Subject to this section, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, the company shall be deemed for the purposes of this section to have paid in the year of assessment in which the loan or advance is made an annual payment of an amount which, after deduction of income tax at the standard rate for the year of assessment in which the loan or advance is made, is equal to the amount of the loan or advance.

(b) Section 239 shall apply for the purposes of the charge, assessment and recovery of the tax referred to in paragraph (a).

(c) The annual payment referred to in paragraph (a) shall not be a charge on the company's income within the meaning of section 243.

(2) For the purposes of this section, the cases in which a close company is to be regarded as making a loan to any person shall include a case where—

(a) that person incurs a debt to the close company, or

(b) a debt due from that person to a third person is assigned to the close company,

and in such a case the close company shall be regarded as making a loan of an amount equal to the debt; but paragraph (a) shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the period of credit given exceeds 6 months or is longer than that normally given to the company's customers.

(3) Subsection (1) shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, if—

(a) the amount of the loan, or that amount when taken together with any other outstanding loans which were made by the close company or any of its associated companies to the borrower, or to the spouse of the borrower, does not exceed £15,000,

(b) the borrower works full-time for the close company or any of its associated companies, and

(c) the borrower does not have a material interest in the close company or in any associated company of the close company but, if the borrower acquires such a material interest at a time when the whole or part of any such loan remains outstanding, the close company shall be regarded as making to the borrower at that time a loan of an amount equal to the sum outstanding.

(4) (a) Where, after a company has been assessed to tax under this section in respect of any loan or advance, the loan or advance or any part of it is repaid to the company, relief shall be given from that tax or a proportionate part of that tax by discharge or repayment.

(b) Relief under this subsection shall be given on a claim which shall be made within 10 years from the end of the year of assessment in which the repayment is made.

(5) Where under arrangements made by any person otherwise than in the ordinary course of a business carried on by that person—

(a) a close company makes a loan or advance which apart from this subsection does not give rise to any charge on the company under subsection (1), and

(b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,

then, unless in respect of the matter referred to in paragraph (b) there is to be included in the total income of the participator or associate an amount not less than the loan or advance, this section shall apply as if the loan or advance had been made to the participator or associate.

(6) In subsections (1) and (5)(b), the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity and to a company not resident in the State.

(7) For the purposes of this section, any participator in a company which controls another company shall be treated as being also a participator in that other company, and section 437 (2) shall apply for the purpose of determining whether a person has for the purpose of subsection (3) a material interest in a company.

(8) For the purposes of this section and in relation to any loan or advance made on or after the 23rd day of May, 1983, section 430 (1) shall apply as if paragraph (b) of that section were deleted.