HMRC - CTM61525 - Loans To Trusts

For all periods (ie pre and post the FA13 changes) loans to trustees/trusts are chargeable under CTA10/S455 in relevant circumstances. Trustees and loans to trustees are mentioned in various places throughout the CTA10/Part 10/Ch3 legislation and its predecessor(s).

CTA10/S455 (1) (b) was inserted by FA13 in order to provide consistency with the wording of loans via other intermediaries (partnerships). It now makes explicit how the legislation applies to trusts. Section 455 (1) (b) applies wherever there is a loan by a close company to a trust and

any of the trustees are participators/associates, and/or

any of the beneficiaries (actual or potential) are participators or associates of participators in the close company

The context of Section 455 is such that it requires that ITA07/S474 (which treats trustees as a single body separate from the individuals who are trustees at any time) does not apply. For Section 455 therefore each trustee will be considered separately.

Both pre and post FA13, loans to trusts, including employee share scheme trusts, Employee Benefit Trusts, Interest in Possession Trusts, and Employer Financed Retirement Benefit Schemes may be chargeable under CTA10/S455 depending on the facts. In particular, for example:

where the trust holds shares in a close company, any loan by that company to the trust will be chargeable because the trustee or trustees are all participators or associates of a participator (and each trustee will be a relevant person, either because that trustee is an individual or, in the case of a corporate trustee, because CTA10/S455 (6) makes them a relevant person)

where the trust holds shares, any loan made in a personal capacity to one of the trustees, or an associate of the trustee, will be chargeable because as trustee he is a participator

where the trust does not hold shares in the company but the trustees are associates of a participator in the company through the operation of CTA10/S448, for example where a participator in the company is also the settlor of the trust, loans to the trustee(s) and/or trust will be chargeable

where the trust does not hold shares in the company but each of the trustees is a relevant person who, as well as being a trustee of the trust is also a participator or associate of a participator, loans to the trustee(s) and/or the trust will be chargeable

if none of these is the case, CTA10/S459 may apply when the trustees make payments (including loans) to any participators or associates

The capacity in which a person receives a loan is not material; Section 455 does not specify the capacity in which any loan is made. Thus in the second example above if an individual is a trustee of a trust which holds shares in the company making the loan, but receives a loan in his personal capacity rather than in his capacity as trustee, the loan will be chargeable under Section 455. He is a participator (as trustee), he is an individual, and he has received a loan. That is all that the section requires.

Where a company has an employee share scheme and makes loans to certain employees to buy shares from existing shareholders, CTA10/S455 (1) will apply where the specific employee is already a shareholder, or CTA10/S459 may apply following the acquisition of the shares. However, CTA10/S456 (3) to (8) may exempt such loans where the relevant conditions are met (see CTM61540).

In any case of doubt or difficulty, particularly where a charity is involved, please refer with the papers to CTIS (Technical).

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