HMRC - CTM61530 - Loans To Participators: Business Of Lending Money

CTA10/S456 (1)

The exemption in Section 456 (1) is really two successive tests:

a company must carry on a business of lending money and

the loan must be made in the ordinary course of that (money-lending) business

There is judicial guidance on the meaning of the first test in the case of Brennan v The Deanby Investment Company Ltd 73TC455.

In the Northern Ireland Court of Appeal Carswell LCJ said (at page 9 of the leaflet):

It seems to us that the phrase in s419(1) “a business carried on by it which includes the lending of money” connotes a certain regularity of recurrence of such transactions. To carry on the business of doing something ordinarily means that it is done as a regular practice by way of a trading operation, if not with all comers, at least with a variety of customers.

A company will therefore only satisfy the first part of the proviso if it has a trade of lending money. Characteristics of the trade of a commercial money lender include whether the company:

advertises its money lending to the public or some sector of the public

publishes its rates of interest

receives applications for loans from the public or from that sector of public to which it lends

charges interest at a commercial rate

has the means (that is, a system and appropriate personnel) to enforce collection of debts

uses official documentation with terms of repayment of the loan clearly set out in a form that can be legally enforced

has a reasonable number of loans (usually 200+) to ensure that profits on the good loans can cover the inevitable loan write offs

matches borrowing and lending - a genuine trader will try and match their source of funds with loans advanced. For example, a trader would not generally borrow short-term funds repayable on demand, and lend them on a long-term basis

A single loan made by a company to a participator, even on commercial terms, is not adequate evidence of the existence of a commercially constituted business of lending money. Since the first test fails, the second test automatically becomes redundant. Even in other cases where the first test is met, a loan to a participator still has to be made in the ordinary course of the business, and that would not be the case where the size, terms or conditions of the loan differed from those that normally applied.

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