HMRC - CTM61550 - Loans To Participators: Indirect Loans

CTA10/S459

Section 459 deals with some loan arrangements where the loan is not made directly to an individual participator in the company (or an associate of a participator). It applies where:

a close company makes a loan or advance which does not otherwise give rise to any charge under CTA10/S455 (1),

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

and

the two events, loan and payment/release/satisfaction, are part of arrangements made by any person

Example 1

Company D is a close company. Instead of making a loan directly to X, an individual participator, it makes it to an associated company, Company E. Company E then passes the loan to X. The loan by one company to the other is treated as if it had been made direct to X.

CTA10/S459 was enacted specifically to cover this situation (loan followed by loan) though it also covers other indirect transfers of value.

Example 2

Company T, a close company, makes a loan to A. A is an individual participator in Company W but not in Company T. Company W, acting in concert with Company T, then makes a loan to D, an individual participator in Company T. Company T and Company W have swapped loans to participators and are treated by CTA10/S459 as if they had each made loans to their own participators.

Consideration should be given to whether Section 459 could be applied to loans to partnerships that are not otherwise chargeable (see CTM61520) and, similarly, to loans to employee share schemes/employee benefit trusts etc where Section 455 (1) does not apply (see CTM61525).

It should also be considered in management buy-out situations. In many cases the close company makes a loan to the new owners who then use those funds to pay the outgoing shareholders for their shares. Whilst this can be a difficult area in which the facts are absolutely crucial, it is exactly the type of arrangement which should be chargeable under Section 455. The company’s own money is being used to buy out the existing shareholders.

When CTA10/S459 applies, the close company should be assessed in the usual way and CTM61600 onwards apply.

CTA10/S459 is subject to CTM61555 and does not apply where a person makes these arrangements in the ordinary course of their business.

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