HMRC - CTM61560 - Loans To Participators: Company Insolvent And Loan Irrecoverable

Where a company has become insolvent and is unable to pay its creditors, it is sometimes argued that the payment of tax due under CTA10/S455 (or also now under CTA10/S464A) on a loan to a participator should be waived because it will damage the interests of the company’s creditors (other than HMRC). Whilst this was potentially the case when HMRC debts took priority on a liquidation it is now unlikely to be the case.

The company should normally take all possible steps to call in the loan or a return payment (CTA10/S464B) and any Section 455 tax would be repaid or discharged on repayment of the loan.

It is open to the administrator or the liquidator to release or write off the loan and again the Section 455 tax would then be repaid or discharged. There would be a charge under ITTOIA05/S415 on the person to whom the loan was made (CTM61655).

Where the loan proves to be irrecoverable, or no return payment is forthcoming, in spite of the company’s or the liquidator’s efforts and the Section 455 or Section 464A charge cannot be otherwise discharged (e.g. by write off), a report should be sent to CTIS (Technical) with the files for the company and for the participator to whom the loan was made.

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