HMRC - CTM61565 - Loans To Participators: Aggregating Accounts

CTA10/S455, CTA10/S458

The question of whether a company has separate accounts, or a single joint account, with the same participator or different participators, is one of fact. The application of Section 455 follows the actual arrangements between the parties, as evidenced, amongst other things, by the treatment of the transactions in the company’s accounting books and records, and the general law on debts and repayments. Facts will not be disregarded simply because other arrangements mayhave produced different results (see the comments of Browne-Wilkinson J at p.432B in E V Booth (Holdings) Ltd. v Buckwell 53TC425.

It may be that, for commercial purposes, certain transactions are kept separate and this is achieved by the use of distinct accounts, even for the same participator. One account may be secured, the other unsecured; one account may bear interest, the other may be interest free; and so on. If, for whatever reasons, the parties choose to keep the various forms of indebtedness separate, then liability under Section 455 may arise if the participator is indebted to the company on any one of those accounts. This will apply all the more where the accounts are held by different persons.

However, the position is different if on balance the evidence indicates that there is genuinely a single joint account, or that all accounts are operated as a single account. It would be unusual, but not impossible, to find two directors operating a single joint account unless they were a couple or otherwise closely related.

An argument that all accounts (where there is more than one) are operated as a single account should be very carefully examined. Where the balances are always kept separate, brought forward and carry forward balances are kept separate, and they are shown as separate balances in the statutory accounts, then the factual evidence would suggest that there is not a single account but several accounts and the relevant Section 455 consequences will follow if any one of those accounts is overdrawn.

You should not accept that separate accounts should generally be aggregated or “netted off” for Section 455 purposes. The legislation is widely drawn, and this is necessary if we are to catch the mischief at which the provisions are aimed. We do not, however, have to show there was an avoidance motive behind the transactions, and we take this line on not aggregating separate accounts to ensure that the proper charge arises when any loan or advance is made or when a debt is incurred.

A credit balance can be used to repay a debit balance (provided that relevant book entries are made), but this is not the same as saying the two accounts can be “netted off”. It does not mean that Section 455 liability only applies to the net debit balance unless and until the credit balance is used to repay the debit balance. Rather, the liability is on the full amount of the debit balance and relief is available under Section 458 (see CTM61600 onwards) to the extent it is repaid. The date of repayment for Section 458 purposes is the date the book entries are made.

In an investigation case, where there have been extractions, it is necessary to make notional debits to the participator’s account. For that purpose only, accounts may be amalgamated (see EM8620). The reason for this is the difficulty of allocating the notional debits to different accounts in an equitable way. But it will have no bearing on any existing Section 455 liability.

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