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Wilmington Professional

Restrictions on repayment of tax on the repayment of a director's loan

In 2013 the rules on the repayment of overdrawn loan accounts were changed to dictate how certain repayments were treated so that the relief rules could not be manipulated.

The legislation refers to 'chargeable payments'. Chargeable payments include loans which give rise to a charge under s455 CTA 2010 and the conferral of benefits which give rise to a charge to tax under s464A CTA 2010. Two rules were introduced.

Rule One: the 30 day rule

This is a matching rule. It matches certain repayments to 'the available amount of relevant chargeable payments'.

- An amount contained in a chargeable payment is an 'available amount' to the extent that no repayment has been treated as made in respect of it by the previous operation of Rule One.
- A 'relevant chargeable payment' is a chargeable payment if (or to the extent that) it is not repaid within the period of 30 days mentioned below.
- An amount contained in a repayment is a qualifying amount to the extent that it has not been treated by the previous operation of Rule One as a repayment of a chargeable payment.

If the conditions below are satisfied the repayments are matched as far as possible with the new chargeable payments. Repayments are available to set off against the original chargeable payments only to the extent that the repayments are in excess of the new chargeable payments.

Where, within any period of 30 days:

i. the qualifying amount of repayments made to a close company in respect of one or more chargeable payments made by the company to a person totals £5,000 or more; and

ii. the available amount of the relevant chargeable payments made by the company to the person or an associate of the person totals £5,000 or more; and

iii. the relevant chargeable payments are made in an accounting period subsequent to that in which the chargeable payments mentioned in (i) were made,

the qualifying amount of the repayments, so far as not exceeding the available amount of the relevant chargeable payments, is to be treated as a repayment of the relevant chargeable payments.

The repayments and new chargeable payments may be in the same accounting period but the new chargeable payments must be made in a later accounting period than the original chargeable payments.

The 30 day rule does not apply to any repayments chargeable as income on the participator or their associate. An example may be where a dividend is declared by the close company of an amount which is equal to the amount of the loan outstanding and upon which the participator is charged to income tax.

HMRC examples (CTM 61630)

Example 1

AP1 loan outstanding £6,000

2 days before end of AP1, repayment of £6,000

On the third day of AP2 there is a new loan of £6,000

The legislation will match the repayment against the new loan. Any loan outstanding in AP1 will remain outstanding and £6,000 will therefore be chargeable under CTA10/S455 for AP1.

Example 2

As above but the repayment is £10,000

The legislation will match £6,000 of this repayment against the new loan (chargeable payment). The balance of the repayment (£4,000) will be available to 'repay' part of the AP1 loan, leaving only £2,000 outstanding and chargeable under CTA10/S455 in AP1.

Rule Two: arrangements

This matching rule considers whether a repayment is made under arrangements which result in a further amount being paid to the participator. If the conditions are met, then the repayment is to be treated as far as possible as a repayment of the new chargeable payment rather than the original chargeable payment.

Where:

i. immediately before a repayment is made in respect of one or more chargeable payments made by a close company to a person, the total amount owed to the company by the person in respect of chargeable payments is £15,000 or more;

ii. at the time the repayment is made, arrangements had been made for one or more chargeable payments to be made to replace some or all of the amount repaid; and

iii. the available amount of the chargeable payments made by the company to the person or an associate of the person under the arrangements totals £5,000 or more,

iv. the qualifying amount of the repayment, so far as not exceeding the available amount of the chargeable payments mentioned in (iii), is to be treated as a repayment of those chargeable payments.

An amount contained in a chargeable payment is an available amount to the extent that no repayment has been treated as made in respect of it by the operation of Rule One or the previous operation of Rule Two.

As with the 30 day rule, repayments such as dividends declared by the close company and so chargeable to income tax will not come within Rule Two.

Movement

Although these rules have been with us for some time, it now appears that HMRC may be looking to enforce them. In particular, it is worth bearing in mind that the 30 day rule applies to any period of 30 days, not just 30 days after the repayment. Effectively, this creates a 60 day window and this may be especially problematic where clients have regular standing orders/direct debits leaving their loan accounts.