Information Sheet

Directors Loans

The authority extended to directors means that directors can potentially enter into transactions with their companies which may result in their placing their interests before those of the company, its shareholders and/or its creditors. It is for this reason that directors are bound by extensive common law and equitable duties; many of which are now prescribed through legislation.

When a director borrows money from their company for personal use there are several legal and tax issues to be considered.

Directors' loans and the Companies Act 2014

Loans greater than 10% of net assets not permitted to directors (or their connected parties);

- Auditor must report to the ODCE;
- However, a Summary Approval Procedure done within 21 days of the loan advanced will resolve this breach;
- BUT - unlimited liability personally on the directors as a result of the Summary Approval Procedure.

Tax Implications of Directors' Loans

Income Tax

Benefit-in-Kind - chargeable to the director for interest-free loan or preferential interest rate (Revenue rates: 4% for loans to purchase a principal private residence and 13.5% for all other loans).

Corporation Tax

If a company makes a loan to a participator, this loan is treated by the Inspector of Taxes as being paid net and must be re-grossed at the standard rate of tax (20%). The tax on the re-grossing of the loan is then payable with the company's Corporation Tax at the end of each year.

The company will then have two assets on its balance sheet;

- loan to a director &
- tax paid on behalf of the loan.

If the loan is repaid the tax office will, on the making of a claim by the company, repay the tax originally withheld.

If a director does not pay interest to the company on the directors' loan, this is treated as Interest Receivable for the company and taxed at the rate of 25%.

Where a director does repay the loan within the twelve-month period the company is due to pay a surcharge when submitting their corporation tax return.
The surcharge is calculated on the basis that 20% income tax was deducted from the loan before the director received it and this must be paid to Revenue. However, once the loan is repaid to the company the tax paid is refundable to the company.

If a loan is subsequently forgiven by the company, the write-off to their Profit & Loss Account will not be an allowable deduction and they will also lose the Withholding Tax paid to Revenue originally.

The participator is then taxed on the gross loan under Schedule D Case IV in the year of forgiveness with a credit for the tax paid by the company to the tax office when the loan was first re-grossed.

Options

- "Gross up" the loan to gross pay and pay the PAYE.
- Sell an asset to the company and set off the amount due for the sale of the asset against the loan.
- Place the company into a Members Voluntary Liquidation and effectively distribute the loan back to the shareholder as a distribution. What CGT the shareholder pays will depend on if the shareholder can benefit from the 10% rate for entrepreneurs, 0% rate for Retirement Relief or if there are capital losses available elsewhere.

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