

Loans from a company to shareholders

We wish to make you aware of an announcement made in the Budget in March 2013 for which legislation has now been published. This legislation will be finalised when the Finance Act becomes law (normally in July) but the new rules have effect for some transactions from 20 March 2013.

What is the position for loans made by a company before 20 March?

If a close company makes a loan to a participator (for example most shareholders in unquoted companies), the company must make a payment to HMRC if the loan is not repaid within nine months of the end of the accounting period. The amount of the corporation tax, often referred to as s455 tax, is 25% of the loan. This tax is included within the corporate tax self assessment system and the company must report loans outstanding to participators at the year end in the tax return.

If the loan is repaid after this date, s455 tax will be repaid but not until nine months after the end of that accounting period in which it is repaid. So the company will need to pay over the tax and wait some time for it to be repaid.

A loan includes advances, such as a current account that many shareholders may have with the company when the shareholder is also a director of the company. A loan to an 'associate' of a shareholder, such as a relative, is also included as if the loan had been made to the shareholder.

What has changed?

HMRC have been concerned that some companies have been arranging loans in a way that seeks to avoid the tax. Whilst not necessarily accepting that all such arrangements work, HMRC want to ensure that some of the arrangements are definitely caught by the tax.

A shareholder may organise his finances such that he repays a loan or advance made by the company to him just before the end of the nine month period so no tax charge arises on the company. Shortly afterwards the company provides another loan to the shareholder. In substance the shareholder has continual use of the money from the company but the company does not suffer the s455 tax that would otherwise arise.

The new law potentially catches such arrangements.

There are two rules introduced.

The first is a 30 day rule. This applies for loans of £5,000 or more. If at least £5,000 is repaid to the company and within 30 days new loans or advances of £5,000 or more are made to the shareholder (or an associate), the old loan is effectively treated as if it has not been repaid. As a consequence s455 tax may become due.

The second is an intention or arrangements rule. The first rule could be avoided by waiting 31 days before the company advances further funds to the shareholder. The second rule applies where:

- the outstanding amount from the shareholder is £15,000 or more;
- at the time the loan is repaid by the shareholder, that person intended to redraw any of that amount from the company or had made arrangements to make a new withdrawal; and
- at any time after the repayment is made a new payment is made to the shareholder or an associate.

The repayment of s455 tax will be restricted by 25% of the lower of the amount repaid and the new payment.

This law applies to repayments of loans on or after 20 March 2013 and so has immediate effect.

What should be done by the company and shareholder so that the s455 tax does not arise?

For a long time, s455 tax has been an area where HMRC seek to identify companies which do not follow the rules correctly. The new law provides them with extra ammunition.

If loans or advances on a current account are made to a shareholder, the amounts need to be cleared within nine months of the accounting period in which these amounts arose. A long established procedure of declaring a dividend or granting of a bonus which is equal to the amount outstanding will continue to remove a s455 tax liability.

It is essential however that the amounts are cleared properly and, in the case of a dividend, in compliance with company law. This is where we can help you to ensure that s455 tax is not payable.

Please [contact us](#) if you require any further information or advice.