



CTISA  
Room 3/63  
100 Parliament Street  
London SW1A 2BQ

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## **Consultation Response re: Loans to Participators (aka Directors and Shareholders)**

Dear Sir/Madam,

Firstly, thank you again for seeing me at such short notice this morning. I found the meeting to be very helpful and it enhanced our appreciation on behalf of our members of the underlying policy drivers. I think it is right that HMT/HMRC look to reform and, wherever possible, simplify all areas of business tax, even those such as Loans to Participators where the legislation has existed for almost fifty years.

### **About the IoD**

The IoD was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 35,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 71% of FTSE 100 companies and 51% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 70%, comprise directors of small and medium-sized enterprises (SMEs), ranging from long-established businesses to start-up companies. IoD members' organisations are entrepreneurial and growth-orientated, and more than half (57%) export goods and services internationally.

### **General comments**

I mentioned some concerns we have over some sections of the phraseology in the Consultation Document. For example:-

- Rather than viewing the loans to participators as 'tax avoidance legislation' as such, I have always viewed the legislation as a mechanism for collecting taxation upon such loans prior to a bonus or dividend being paid or the loan being repaid. In essence, most loans I have seen are driven by short term financial considerations rather than any desire to avoid taxation.
- We consider the legislation ought not to treat a loan made for business purposes as being within the ambit of the legislation and tax charge. I accept that the taxpayer would need to be able to demonstrate that this is the purpose of the loan rather than the purpose being personal consumption.
- This treatment is already accepted in most company-to-company loan situations but many shareholders (e.g. serial entrepreneurs) increasingly look to other forms of business structure, especially Limited Liability Partnerships, for their new ventures. I do not see the need for any form of taxation charge where, for example, a £250,000 loan is made by an established company controlled by a shareholder to a new business organised as a Limited Liability Partnership she/he might have established with a new business partner. Indeed, the Coalition Government's desire for a tax system facilitating the establishment of new entrepreneurial businesses in the UK appears to say the opposite.

- The Sections in the Condoc's introduction and the assessment of the current rules ought to, in my opinion, state explicitly that HMRC accept that, typically, there is a tax cost of a shareholder funding his/her living costs through loans as the PAYE/NI deferred is typically matched by the corporation tax accelerated (no need for a worked example I trust).

Turning to the four options considered:-

- Option 1: I consider that maintaining the current regime would be satisfactory on the basis that the Company-to-LLP (or Partnership) Business Loan aspect is removed from the charge.
- Option 2: I appreciate the reasoning for the tax charge to be increased but this should only be contemplated if both business loans are removed from the tax charge and the increase removes the need for an income tax charge upon the recipient under the beneficial loans legislation.
- Option 3: I consider that the introduction of a permanent annual tax charge upon the year-end balance (i.e. not refunded when the loan is cleared by repayment, a bonus or a dividend) is very undesirable. The rate would either be punitive as an additional tax burden (for many businesses) or attractive as an acceptable cost of securing finance (for some but fewer businesses); indeed, I cannot imagine that HMT would wish, on reflection, to encourage a situation which led to a comparison of the cost of borrowing from a bank or, in effect, from HMRC.
- Option 4: For the same reasons, a permanent annual charge upon the average amount outstanding is undesirable and this route would also introduce significant complexity for many entrepreneurial businesses which would not be merited by the difference in the tax collected. Some businesses maintain their accounts to comply with the necessary VAT and PAYE reporting requirements but otherwise prepare monthly, quarterly or annual accounts which do not require daily entries. Such businesses might need advice on how to undertake the calculation on the basis required by the tax legislation and this would, almost inevitably, become time consuming and expensive.

I trust that the above comments encompass the points I made this morning and are of assistance to HMT/HMRC in deciding whether to and, if so, how to reform and simplify the existing tax treatment of loans to participators.

Kind regards,

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