

# Preliminary Corporation Tax on Loans to Participators in Close Companies

## Part 13-02-04

This document should be read in conjunction with section 438 of the Taxes Consolidation Act 1997 and Part 13-02-03 of the Tax and Duty Manuals

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## Introduction

This manual outlines the operation of section 438 TCA 1997 in the context of the preliminary tax provisions for close companies and includes information on Revenue practice in this area.

The manual also incorporates the text from Revenue eBrief, No. 56/2007 of November 2007.

## Charge to Income Tax

A charge to income tax is imposed by section 438 TCA 1997 on a close company (at the standard rate) on the grossed-up equivalent of a loan or advance made by the company to a participator or to an associate of a participator. Income tax so deducted forms part of the company's corporation tax liability and must be included on the company's corporation tax return.

Where a company has been assessed to tax under this section, provision is made for relief in respect of the tax paid where the loan to the participator (or to an associate of a participator) is repaid after the date of the assessment.

## Preliminary Tax

Revenue has reviewed the operation of the above provision in the context of preliminary tax provisions. For the purposes of satisfying a company's preliminary tax obligations for an accounting period, Revenue **will not** require the company to take account of the provisions of section 438 TCA in circumstances where:

- the participator or associate of the participator repays the loan or advance by the due date for filing of the company's corporation tax return i.e. within nine months of the end of the accounting period in which the loan or advance was made.

## Exclusions

Revenue considers that the practice set out in this statement should be relied upon only to the extent that the loan arrangements concerned are undertaken in good faith and for purposes other than tax avoidance.

The practice will not apply in the case of 'bed and breakfast' type of arrangements where a new loan or advance is taken out on, or shortly after, repayment of an existing loan or advance. In such cases, Revenue will insist that the section 438 provisions will apply for preliminary tax purposes.

However, in circumstances where it is the practice of a director to operate a current account with the company and this account is cleared annually from the director's own resources (e.g. the director's remuneration), such an arrangement **will not** be regarded as a 'bed and breakfast' type arrangement.

## Other Considerations

Practitioners are reminded that, throughout the relevant accounting period, any PAYE required to be accounted for under the PAYE system in respect of any benefit-in-kind charge, arising under section 122 TCA 1997 on any loan or advance, must be remitted in a timely manner by the company to the Collector-General.

If this date is after the 21st of the ninth month, the filing date is brought forward to the 21st of the ninth month.

## Revenue Review

In addition, and without prejudice to Revenue's entitlement to review, amend or withdraw its practices from time to time as appropriate, the practice set out above will be subject to ongoing review by the Revenue Commissioners, and Revenue reserves the right to amend or withdraw this practice on foot of such review as respects preliminary tax payments due after such amendment or withdrawal.