

### **[13.2.4] Section 438 TCA 1997 [Loans to Participators] and Preliminary Corporation Tax**

[Tax Instruction 13.2.3 refers]

*(Revenue eBrief No. 56/2007 7 November 2007 – text below)*

Section 438 TCA 1997 imposes on a close company a **charge** to income tax at the standard rate on the grossed-up equivalent of a loan or advance made by the company to a participator or 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 [CT1]. Where a company has been assessed to tax under this section, provision is made for **relief** in respect of the tax paid in the event that the **loan** is repaid after the date of the assessment.

Revenue has reviewed the operation of the above provision in the context of the **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 with regard to the imposition of the charge to income tax in circumstances where the participator or associate of the participator repays the loan/advance in question by the due date for filing of the company's corporation tax return, i.e. within 9 months of the end of the accounting period in which the loan/advance was made.

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/advance is taken out on, or shortly after, repayment of an existing loan/advance. In such cases, Revenue will insist that the provisions of **section 438** be taken into account 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), then such an arrangement will not be regarded as a 'bed and breakfast' type arrangement.

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.

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.

Reviewed April 2016