



HM Revenue  
& Customs

Business, Assets and International



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**Our Ref** LC/29/24  
**Your Ref** OMB

Dear Pete,

### CTA 2010 S459 – Loans to Participators Charge on Upstream Loans

1. Thank you for your letter of 13 June 2024. I apologise for the very long delay in replying, I have been considering the position in relation to some cases that I have recently seen.

### Point at Issue

2. Whether section 459 CTA10 should continue to apply to upstream loans in buyout scenarios?

### Opinion

3. I consider that S459 CTA10, first introduced as S75(6) FA1965 should continue to apply to such upstream loans. The original shareholders of the original/target company are in receipt of funds from that company on which they have paid no income tax. That is the target of the Loans to Participators regime.
4. Whilst they may pay Capital Gains Tax on the sale of their shares, the funds they receive do not form part of their total income, and therefore the exclusion from the S459 CTA10 charge in S459(3)(b) cannot apply, as it is aimed at income tax avoidance.

### Legislation

5. Section 455 creates a tax charge on a close company when it makes a loan to a relevant person (an individual who is a participator (or associate of a participator)) or when that person becomes indebted to the company other than by way of loan.
6. The application of the charge is extended by S459. It also applies where:
  - a) a close company makes a loan etc which is not caught by S455
  - b) Some person other than the close company makes a payment to...a relevant person who is a participator...in the company...

7. A 'relevant person' is defined at S455(6) and includes individuals.
8. The definition of participator is found in S454 CTA10, and includes, at S454 (2)(b) 'a loan creditor' of the company.

### **Discussion**

9. I note that you consider the application of S459 to management buyouts to be unfair. As I suggest above, however, the effect of these types of arrangement is exactly what the Loans to Participators regime is aimed at, shareholders of close companies in receipt of monies from their companies which have not been subject to income tax.
10. We do indeed 'take the point' relatively regularly. Indeed, our guidance manual clearly states that S459 will often apply in buyout scenarios. The legislation only applies though where the recipient of the monies is a shareholder (and that includes where he is a loan creditor).
11. We have no evidence to suggest that the application of S459 has prevented such transactions though, as above, the specific anti-avoidance legislation has existed since 1965. We are also aware of transactions which have navigated the rules without triggering a charge.
12. You will also be aware that despite the major changes to the regime introduced in 2013, further changes have had to be made in this year's Budget to protect its reach. We do not intend to in any way weaken the application of S455/S459, which, together, as you will be aware, serves as a backstop to income tax avoidance.
13. I think it also possible that S464A CTA10 could apply in such scenarios, in the absence of S459 CTA10,

  
**Policy and Technical Adviser, Loans to Participators**