HM Revenue & Customs

Insolvency Guidance

29 September 2022

Process for DLAs written off as part of corporate insolvency procedures

Background

HMRC has designed a new voluntary process to allow a more datadriven and targeted approach to the issue of Director's Loan Accounts (DLAs).

This specifically applies in situations where DLAs are written off as part of a corporate insolvency procedure because the debtor cannot afford to repay the loan to the company.

The process is entirely voluntary, and IPs don't need to use it if they don't wish to.

When is a DLA written off?

HMRC repayment guidance is at CTM61600 and writing off a loan guidance is at CTM61655 of HMRC's Company Taxation Manual.

HMRC's Customer Strategy & Tax Design (CS&TD) are the product owners for Section 455 CTA 2010 tax and administer this part of the tax legislation.

They have confirmed that there is no prescribed form of words or process for writing off a loan.

The crux of the issue is that the company:

- accepts that the loan will not be repaid, and
- gives up attempts to collect the debt.

Each case will be judged on its own facts, and the decision as to whether to write a loan off or not is solely a decision for the IP to make.

If you are in any doubt about the tax consequences of writing off a loan, then please contact Craig Dickson at craig.dickson@hmrc.gov.uk to discuss the case.

What are the tax consequences of a DLA being written off?

If the company has paid Section 455 tax to HMRC, to claim a repayment of the tax under Section 458 CTA 2010 the loan must be:

- released,
- repaid, or
- written off.

Once one of those events has happened, the company becomes entitled to a repayment of any Section 455 tax that has paid on the loan in question.

If only a proportion of the loan has been released, repaid, or written off then the company will only be able to claim for a repayment for that proportion.

For example: if 25% of the loan has been released, repaid, or written off then the company can claim for 25% of the Section 455 tax back.

A claim must be made within four years of the end of the financial year in which the repayment, release, or writing off occurs.

The repayment is due nine months and one day after the end of the accounting period in which the loan was released, repaid, or written off.

In other words, if the loan was written off in accounting period ending 31 December 2021 then repayment would be due on 01 October 2022.

Repayment of S455 tax out of contract settlements

HMRC's guidance on contract settlements is at EM6000 onwards of the HMRC Enquiry Manual.

Put simply, a customer or customers will pay HMRC a sum of money in return for HMRC not formally issuing assessments for tax and penalties.

This sum could be in one lump or over instalments, and a contract can have joint and several liability between different entities.

The contract itself is a binding agreement and HMRC's Debt Management will enforce the payment terms in the same way that they would with any other charge.

Where Section 455 tax has been paid to HMRC as a part of a contract, then the process for providing repayments in line with Section 458 is different.

Payments for contract offers are kept on a separate accounting system (Strategic Accounting Framework Environment or SAFE) – and when a request for repayment under Section 458 is received we amend the charge on this system. Repayments must be approved by a compliance officer (EM6415).

If you have a case involving a contract settlement that is proving difficult, then Craig (craig.dickson@hmrc.gov.uk) would be very happy to help as he is the national lead for such cases across Individual and Small Business Compliance (ISBC).

New write off process

Where an IP wishes to use the new process, copies of all final reports that contain DLAs should be sent to the new mailbox: writeoffmailbox.isbcs455@hmrc.gov.uk.

IPs can contact Craig prior to the submission if they would like to talk through the details of the case before sending the report to him.

Earlier dialogue should mean early handling of any issues or opportunities.

A forwarding rule will be created to ensure that the final reports still get sent on to the mailbox that they get sent to now.

The details of each company will be added to a secure spreadsheet and subject to an initial triage to establish any:

- tax compliance risks, or
- assets that might facilitate recovery.

If there are assets identified that might have been missed, the IP will be contacted to discuss potential recovery routes.

If there are no assets and if an element of a loan is not going to be fully recovered, then the customer prompt part of the process is enabled.

A 'nudge' letter will be sent to each individual customer who has benefited from a loan being written off.

This letter will advise them of the need to return the income on their next Self-Assessment tax return per Section 415 Income Tax (Trading and Other Income) Act 2005.

(HMRC's Savings and Investments Manual at SAM5200 provides more detail).

Customer returns will be monitored to check whether this income has been returned as advised; if it has not then a formal enquiry under Section 9A Taxes Management Act 1970 will be opened.

All information relating to the process will be kept on the secure spreadsheet, which will allow HMRC to:

- Build up a picture of the volume and quantum of DLAs being written off, and

- Establish an evidence base on which to develop future compliance work into this customer population.

We also aim to support IPs in generating better returns for creditors.

Queries

The process is run and maintained by Craig Dickson in ISBC.

You can contact Craig with any queries on 03000 592232 or at craig.dickson@hmrc.gov.uk.