

## Taxline and VATline Q & A

Taxline 0845 356 0006 VATline 0845 356 0007

**Q: My client owns a company which recently ceased trading as a housebuilder. About two years ago he purchased a completed property from the company but the purchase price has remained outstanding ever since.**

**Additionally, once the company ceased trading, my client immediately took out all the surplus cash without consulting me and used it to purchase a holiday home abroad. He would like the company to be wound up informally in accordance with ESC C16 but it seems unlikely that the shareholder will be able to repay the funds he owes to the company. Is there anything that can be done to solve this problem?**

A: A participator's debt to a close company incurred for the supply by the company of goods or services in the ordinary course of its trade or business is excluded from the s419 ICTA 1988 legislation (loans to participators). However, s420 ICTA 1988 only excludes such a debt if the credit given by the company to the participator does not exceed six months or the period of credit normally given to its customers, whichever is the shorter. In this case, the purchase price for the house has remained outstanding for two years and is therefore outside the exclusion, so that the amount outstanding is caught by s419, in addition to the funds that the shareholder extracted after trading ceased. These amounts should be reported in the appropriate corporation tax returns. If the outstanding purchase price was not included as a loan to a participator there is potential liability for interest and penalty.

An ESC C16 informal liquidation requires dissolution of the company under s652 of CA1985. As the loans cannot be easily called in, the alternative would be for them to be set off by transfer to the shareholder in satisfaction of his rights to share in the company's assets (including his debt). According to paragraph CTM M36210 of the HMRC Manual, in those circumstances the loan should be treated for s419(4) purposes as repaid up to the amount of the loan or of the participator's share of the assets, whichever is less. However, if a loan is 'repaid' in this way more than nine months after the end of the accounting period in which it was made, relief is deferred until the due date for the accounting period in which the 'repayment' takes place, so that the company cannot be dissolved under s652 CA 1985 until that date. If the loans have been interest-free, the shareholder will also have an income tax liability under the benefit-in-kind legislation as a beneficial loan.