The case of Quillan v HMRC: the dangers of a director’s loan account

OMB Personal tax



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We look at a case which considers the consequences of a company going into liquidation when it is still owed money on a director’s loan account.

Key Points

What is the issue?

Mr Quillan, sole director of BOH Investments Limited, had an outstanding loan balance when the company went into liquidation, owing roughly £439,954 to his company. He made several payments amounting to around £57,500; however, the remaining balance of £382,456 was never repaid.

What does it mean to me?

HMRC later contended that the non-pursuit of the remaining debt by the liquidator effectively amounted to a write-off, thereby creating a tax liability of £145,058.66 for Mr. Quillan. The tribunal referenced standard dictionary definitions to support its view that the liquidator's actions fell short of officially accepting the debt as uncollectible.

What can I take away?

A slight phrasing difference can determine whether a debt is deemed written off and trigger additional tax liabilities. Careful review of liquidator correspondence during company liquidation is essential, as even minor language variations can have significant tax consequences.

I can remember the first time I saw a corporation tax assessment seeking tax on a loan to a participator. (This was in the days before Self Assessment and Corporation Tax Self Assessment and, in those days, assessments came on coloured paper – different colours for different types of assessment.My recollection (and I am more than happy to be corrected) was that this one was purple.)

Having previously worked in what is now the Big Four, loans to participators did not tend to happen that often (or, at any rate, I did not see them). When I moved to a smaller firm, I learned that these were in fact quite commonplace in owner-managed businesses.

As well as the corporation tax, such loans can also give rise to a taxable benefit-in-kind in relation to the employee/director (and Class 1A National Insurance Contributions).

However, it is not only the existence of such loans that can have tax consequences: the end of the loan relationship between a company and a participator can also trigger tax
issues.

For example, the Income Tax (Trading and Other Income) Act 2005 s 415 imposes a tax charge where:

- there is a loan by a company to a participator; and
- the company either releases, or writes off, some or all of the debt remaining.

That tax charge is based on the amount that has been released or written off (s 416). The logic is clear: if a participator has received a loan of (say) £100,000 and the company later releases the debt, the participator is effectively £100,000 better off. It makes sense that the participator should then be taxed on that £100,000 windfall.

The practical effect of these rules was considered by the First-tier Tribunal in the recent case of *Quillan v HMRC* [2025] UKFTT 421 (TC).

The facts of the case

Mr Quillan was the sole director of BOH Investments Limited. He owed the company £439,954 when, in 2017, it was resolved that the company be liquidated. In January 2018, the liquidator reported that Mr Quillan had very little funds and insufficient income to make any settlement towards paying off that debt. However, following threats of legal action, as the liquidator reported, Mr Quillan offered to pay the company £57,500 to settle the company's claim against him.

Over the following six months, six payments were made by Mr Quillan to the company, which totalled £57,498. Early in 2019, the liquidator reported that 'no further funds are expected in this respect', thus leaving Mr Quillan's debt at £382,456. BOH Investments Limited was dissolved in April 2020.

HMRC later started to enquire into Mr Quillan's 2018-19 tax return and focused on the loan from the company.The liquidator provided information to HMRC confirming that the balance of the loan 'remained unresolved and was not formally written off'.

HMRC concluded, however, that there was sufficient evidence to conclude that the liquidator had taken a decision not to pursue the outstanding debt. In HMRC's view that was equivalent to it being written off and, therefore, a tax charge under s 415 arose.HMRC issued a closure notice on that basis. The deemed income of £382,456 gave rise to an additional tax charge for Mr Quillan of £145,058.66.

Mr Quillan appealed against the closure notice to the First-tier Tribunal.

The First-tier Tribunal's decision

The case came before Judge Susan Turner and Member Gill Hunter.

The tribunal addressed two arguments put forward by HMRC. First (albeit it was HMRC's reserve argument), it considered whether the loan had been released. It was common ground that a release required more formality than a mere writing off. Looking at the liquidator's report, it was clear that the liquidator took a pragmatic view that further funds (over and above the £57,000 odd already received) were unlikely to be forthcoming. However, there was no evidence to suggest that there was any formal decision releasing Mr Quillan from his debt. As a result, the tribunal decided that there was no release.

The tribunal then proceeded to consider whether the balance of the loan was written off. On the basis of the various correspondence from the liquidator, it was clear that his intention was (had Mr Quillan's circumstances changed) to keep open the possibility of restoring the company to the register in order to recover further funds from Mr Quillan. In the circumstances, this indicated that the debt had not been written off.

For these reasons, Mr Quillan's appeal was allowed.

Commentary

A lot of the arguments concerning the meaning of a debt being written off focused on the lack of statutory definition of the term, and the parties resorted to interpreting dictionary definitions of the term. One part of the tribunal's reasoning was that the *Cambridge English Dictionary* suggested that to write off a debt requires one 'to accept … a debt will not be paid'. In the present case, the liquidator's actions fell sufficiently short of such an acceptance.

In reaching its conclusion, the tribunal has effectively disagreed with HMRC's published guidance, which suggests that any decision not to pursue a debt amounts to a write off of that debt. That approach might be appropriate in many cases but it is not an invariable rule, as this case demonstrates. Each case must be considered on its own merits and a slightly differently worded report by a liquidator could easily yield a different outcome.

The tribunal also referred to another argument which did not need to be addressed: if the debt had been written off (or released) when did that event occur? HMRC was pinning its hopes on the debt being written off (or released) in the 2018-19 tax year, which was when the liquidator stated that 'no further funds are expected in this

respect’. However, it was arguable that the critical date was in the previous year when the liquidator agreed with Mr Quillan to receive the £57,500. That is an argument that will have to be resolved in a subsequent case (or, if HMRC chooses to appeal against the First-tier Tribunal’s decision and does so successfully).

Finally, what the tribunal did not mention is why HMRC thought that it could extract the tax from Mr Quillan in circumstances when the liquidator considered recovery of any more funds from him to be unlikely. Had Mr Quillan come into money since the company was dissolved (but without the liquidator’s knowledge)? The fact that Mr Quillan represented himself is a possible clue that he remains impecunious. We will perhaps never know.

What to do next

The key takeaway from this case is to read very carefully the correspondence with, and any reports from, a company’s liquidators. A slight change in the wording might be the difference between a debt being written off (and a consequential tax charge on the debtor) or not. Given that the debtor will often have little influence on how a liquidator words any reports, this would suggest that, notwithstanding Mr Quillan’s success in this case, the liquidation of a company which is owed money by a participator can still spell danger.

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