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COMPANY DIRECTORS LOAN ISSUES

By Damien Malone, Malone & Co

In this article, we consider the consequences of an overdrawn Director's loan account for limited companies and their directors.

If a payment is made to a Director and it does not form part of the director's remuneration package or is not an allowable expense for the company, the payment must be set against their Director's loan account. Once any such payments are in excess of any funds owed to the director, they are in default and therefore a debtor of the company. This has a number of implications and legal considerations.

Firstly, if a balance remains outstanding on their loan account at the company's year end, this can lead to an income tax charge on the company. If the Director repays the outstanding loan balance (or part thereof) the company can request a refund of this income tax payment from Revenue.

A second implication of an overdrawn director's loan account is that it can trigger a benefit in kind. As mentioned

above, an overdrawn director's loan account is effectively an interest-free loan. The benefit would be equal to the interest that would have been charged by an unconnected party (the calculation of which is stipulated by Revenue).

If the loan is not repaid or is forgiven by the company the Director will be liable to income tax on the grossed up full amount of the loan.

A potentially more serious implication of an overdrawn Director's loan account is the company law restrictions. Under company law it is illegal for a company to loan more than 10% of its net assets to their Directors. If this restriction is not complied with the Directors can be prosecuted by the Office of the Director of Corporate Enforcement (ODCE).

If you are a director and would like to speak to us about the above issues then please contact us today and we would be happy to discuss your circumstances in more detail. Contact Malone & Co. Accountants & Tax Advisors, Phone: 00353 87 6859474 or visit our website www.maloneaccountants.ie

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