

Mr Terry Thompson  
H M Revenue & Customs  
Pension Scheme Services  
PO Box 175  
Bootle  
L30 4TX

29 June 2012

Dear Mr Thompson,

**Tierney Family Trust**  
**PSTR 00157669RZ (CFS499593)**

Thank you for your letter dated 17 May and my apologies for the delay with my reply.

I would agree that any loan which is not lodged by a security of sufficient security equal to the loan and interest on a first charge basis is unauthorised. Having looked at the correspondence at the time I would advise as follows:

The charging provision was put in place following the date Mr Tierney became a participator in the Company, but the effective date of the Charge was from the date the loan facility letter became available to the Company. This is set out in the charging document. It was not possible to put in a charging provision at the time of initial loan facilities as Mr Tierney and the other shareholder had not taken control of the business and thus was not able to pledge shares with others.

#### **CHARGING PROVISIONS**

The Chargor with full title guarantee charges in favour of the Charge Holders for the payment and discharge of the Secured Liabilities by way of fixed charge the Charged Shares with effect from the date of the loan facility letter.

The second issue is whether the Company was a sponsoring employer for the purposes of the Regulations at the time of the original loans. The Employer, Boutique Leisure was not capable of providing benefits in respect of the members of the scheme as contributions were not possible and there was no contractual commitment to provide pension benefits until after Mr Tierney became a participator in the firm. The position is therefore viz a viz as follows:

Loan to an Employer that was not a sponsoring employer: £100,000 and £8000.

The pension scheme return was prepared from the information given in the accounts; which did not make a clear distinction on the relationship between the Company and the Scheme at the time the loans were made.

It was not until we have reviewed this matter further that the Trustees need to authorise an amendment to the scheme return; in that the loans for £100,000 and £8,000 was to an unconnected party.

With regard to the loan of £5,000 we consider this payment as being taxable as an unauthorised employer payment. As at the time, this was not treated as a loan in the accounts for the pension scheme and has not been brought to our notice before until your audit of the scheme.

With regard to the lump sum payments, the members requested us to confirm commencement lump sums at outset which we confirmed. The members made a series of PCLS drawdowns – as per the account and completed BCE forms at the time. For your convenience, I enclose a copy of an excel version of the drawdown amounts. We would agree that the drawdown of lump sums in this manner is not consistent with how we would expect clients to take their lump sums payments; however they have completed the relevant paperwork at the time and the payments are consistent with the regulations; however unusual they appear in this manner.

Yours Sincerely,

Mark Miserotti  
**For Pension Practitioner.Com**