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

30 August 2013

Dear Mr Thompson,

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

Thank you for your recent letter of 25 July.

As you rightly point out the meaning of a sponsoring employer in relation to an occupational pension scheme means the employer, or any of the employers, to or in respect of any or all of whose employees the pension scheme has, or is capable of having, effect as to provide benefits.

We would agree that Mr Tierney is a member of The Tierney Family Trust and that he is not employed by Boutique Leisure Limited; we also agree that he is not entitled to accrue benefits within the plan in respect of any non-employment association.

With regards to providing benefits for other Boutique Leisure employees we contend that this would only be possible if those employees were admitted as members into the pension scheme.

Although it is allowable under the scheme rules to admit any employee of a participating employer this has not actually happened. The scheme is therefore incapable of providing benefits to those individuals.

You are suggesting that it is the potential for employees to join the pension scheme that needs to be considered under the definition of a sponsoring employer. In response to this we would advise that the pension scheme is still in fact incapable of providing benefits as no other members have been admitted who are employees. Relevant funding cannot be made from Boutique Leisure Limited because none of the employees are members within the pension scheme and no employee will ever become a member of the pension scheme.

The definition of a sponsoring employer, which includes the capability to provide benefits for other employees, is therefore irrelevant as the trustees will never exercise this option. The provision 16.1.1 is academic in this situation.

It has never been the trustee's intention to widen the membership to other individuals as the pension scheme is a private plan for the existing members. Reference 16.1 of the scheme rules says that "the trustees may in their absolute discretion admit a member" - if their intention is never to admit Boutique Leisure employees to the pension scheme then Boutique Leisure cannot be considered a sponsoring employer, at any point in time.

The trustees consider the deed of participation executed on 5 January 2009 to be ineffective based on the fact that the criteria for Boutique Leisure Limited to become a sponsoring employer does not fall within the definition of a sponsoring employer in relation to an occupational pension scheme.

Yours sincerely

Mark Miserotti  
**For Pension Practitioner .Com**

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