



**HM Revenue
& Customs**

**HM Revenue & Customs
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Mr M Miserotti
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Monday to Friday 9.00 to 17.00

Fax 0151 471 2527

www.hmrc.gov.uk

Date 22 January 2013
Our Ref PSTR 00157669RZ (CFS-499593)
Your Ref -

Dear Mr Miserotti

Tierney Family Trust

Thank you for your email dated 5 December 2012 enclosing your letter of 21/11/12 and various attachments. Please accept my apologies for the delay in getting back to you.

As you are already aware the main thrust of my enquiry, so far, relates to the loans advanced by the pension scheme to the company called Boutique Leisure Ltd (CRN -6781349). As far as I am aware there have been three loans, the details of which are set out below. If, however, there have been any other loans or payments, please provide full details.

Loan 1. £100k

In respect of this loan the agreement is dated 2 April 2009 and secured by shares via a charge document dated 2 April 2009. However, according to the scheme's bank statement the £100k left the account on 19 January 2009, which was before the date of the loan agreement and charge document.

Loan 2. £8k

This loan agreement is also dated 2 April 2009 and secured by a charge document dated 2 April 2009 but I note the £8k was advanced on 12 March 2009, which again predates both the loan agreement and charge document dates.

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number – 18001

Loan 3. £5k

In light of what you have said in respect of this loan/payment in your letter of 29 June 2012 I have no other comments to make other than it is agreed that this payment was an unauthorised payment subject to the tax charges under sections 208 & 239 FA04. Unless I hear from you to the contrary I will proceed on this basis.

How the £100k & £8k loans are treated for tax purposes is largely dependent on the "status" of the company, Boutique Leisure Ltd, i.e. was it or wasn't it a sponsoring employer when the loans were advanced. That said, other factors may have a bearing on possible tax charges.

In your letter of 21 November 2012 at point 3. you state that (in relation the deed that admitted Boutique Leisure Ltd into the pension scheme), that *"the deed of participation is therefore ineffective as per our previous letter the loans should be treated as unconnected party loans"*. And as such, you suggest that Boutique Leisure Ltd was an unconnected party rather than a connected party when the loans were made.

I am not entirely satisfied that the deed in question (deed of participation dated 05/01/2009, effective from 31/01/2009) is or could be considered to be ineffective. The Trustees of the pension scheme and directors of Boutique Leisure Ltd signed this deed so at least at face value Boutique Leisure Ltd became a participating employer with effect from 31 January 2009.

Also at point 3 you have explained that this problem was due to a miscommunication concerning Mr Tierney's relationship with Boutique Leisure Ltd. However while your company may have prepared the deed as mentioned above it was duly signed by the trustees and representatives of Boutique Leisure Ltd. While I can accept that your company (Pension.Practitioner.com) may have misunderstood the situation I would have thought that as the deed was signed by the trustees and company directors they believed it was satisfactory.

Having considered your explanations I am not satisfied that the deed was ineffective but I am happy to invite your further comments and will review any documents you may hold to support your view.

If for the moment we assume that this deed of participation was ineffective, is it the case do you contend that it is completely ineffective or did it become effective at a later date? Please explain exactly what the position is in relation to this matter and if you are saying that the deed became effective at a later date what is the date in question and why did it become effective from this date. If however you are saying that the deed has never become effective then if HMRC accepted this it would mean Boutique Leisure Ltd was never a participating employer.

I am now turning to the loan and charge documentation that you had previously provided. Both the loan documents and the charge documents relating to the £100k & £8k are dated 2 April 2009. You are claiming that these loans were made to an unconnected party and as "evidence" cite a letter dated 5 November 2012 from a Mr P Fogarty a director of Boutique Leisure Ltd. This letter states that Mr Tierney only became a shareholder in Boutique Leisure Ltd on 1 May 2009.

If this is the case perhaps you can explain the following:

- If as Mr Fogarty's letter states Mr Tierney only became a shareholder of Boutique Leisure Ltd on 1 May 2009 please explain why Mr Tierney signed a charge document 2 April 2009 which purports to create a charge over shares he owns in Boutique Leisure Ltd that according to Mr Fogarty's letter Mr Tierney apparently didn't own?

- Please also explain why, despite Mr Fogarty's claim that Mr Tierney only acquired shares in Boutique Leisure Ltd on 1 May 2009 that the attached document obtained from Companies House states that Mr Tierney acquired 60 shares in Boutique Leisure Ltd on 30 December 2008?

Other aspects

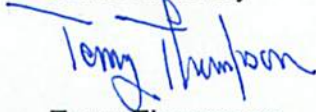
In your letter of 21 November 2012 you advise that 3 payments of tax free lump sums in the amounts of £10,000, £14,997, & £54,000 were made, which you have explained were paid under unusual circumstances. I believe the implication is that these payments were made directly from the pension scheme to HMRC & L Paterson Moody. If this is the case I would have thought there should be correspondence/documentation between the members' concerned and the trustees agreeing to these transactions. Please provide copies of all correspondence/documentation relating to these transactions. If there is no documentation please explain how the trustees justified making the payments. If however I have misunderstood this aspect please provide me with a full explanation.

And finally I acknowledged receipt of your email of 9 January 2013 and attachments. I have no comments to make regarding these documents at this time.

I look forward to hearing from you by 22 February 2013.

When you contact us about this check, you need to quote the case reference CFS-499593 and any other references shown above. If you write you need to use the address shown above and if you send documents you must tell us if you want them returned.

Yours sincerely



Terry Thompson
Pensions Compliance

Direct line 03000 564 192



Please complete in typescript,
or in bold black capitals.

CHFP010

24
88(2)

Return of allotments of shares

Company Number

Company Name in full

BOUTIQUE LEISURE LIMITED

Shares allotted (including bonus shares):

Date or period during which shares are
allotted

(If shares were allotted on one date
enter that date that date in the "from"

From

To

Day	Month	Year
3	0	1 2 2 0 0 8

Day	Month	Year

Class of shares
(ordinary or preference etc)

Number allotted

Nominal value of each share

Amount (if any) paid or due on each
share (including any share premium)

ORDINARY		
60		
£1.00		
£1.00		

List the names and addresses of the allottees and the number of shares allotted to each overleaf
If the allotted shares are fully or partly paid up otherwise than in cash please state:

% that each share is to be treated as
paid up

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Consideration for which the shares
were allotted

(This information must be supported
by the duly stamped contract or by the
duly stamped particulars on Form
88(3) if the contract is not in writing)

When you have completed and signed the form please send it to the
Registrar of Companies at:
Companies House, Crown Way, Cardiff, CF14 3UZ DX 33050 Cardiff
for companies registered in England and Wales
or
Companies House, 37 Castle Terrace, Edinburgh, EH1 2EB
for companies registered in Scotland DX 235 Edinburgh

TUESDAY



A16 08/01/2009 213
COMPANIES HOUSE

Names and addresses of the allottees

(List joint share allotments consecutively)

Shareholder details	Shares and share class allotted	
Name JOHN E TIERNEY <hr/> Address CONWAY HOUSE, THE FAIRWAY, WORPLESDON, SURREY <hr/> UK postcode GU3 3QE	Class of shares allotted ORDINARY	Number allotted 60
Name <hr/> Address <hr/> UK postcode	Class of shares allotted <hr/> <hr/>	Number allotted <hr/> <hr/>
Name <hr/> Address <hr/> UK postcode	Class of shares allotted <hr/> <hr/>	Number allotted <hr/> <hr/>
Name <hr/> Address <hr/> UK postcode	Class of shares allotted <hr/> <hr/>	Number allotted <hr/> <hr/>

Please enter the number of continuation sheets (if any) attached to this form

Signed

FOR AND ON BEHALF OF
OCS CORPORATE SECRETARIES LTD

Date

30 DEC 2008

A director / secretary / administrator / administrative receiver / receiver manager / receiver

Please give the name, address, telephone number and, if available, a DX number and Exchange of the person Companies House should contact if there is any query.

ONLINE COMPANY SERVICES LIMITED, MINSHULL HOUSE, 67	
WELLINGTON ROAD NORTH, STOCKPORT, SK4 2LP, ENGLAND,	
T: 0161 477 8282 Tel	
DX number	DX exchange