



**HM Revenue  
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**Date** 25 July 2013  
**Our Ref** PSTR 00157669RZ (CFS-499593)  
**Your Ref** -

Dear Mr Miserotti

**Tierney Family Trust**

Thank you for your email of 2 July which included your letter dated 17 June 2013 and thank you for resending copies of previous correspondence via your email of 24 July.

Upon reviewing the information you have provided my comments are as follows.

I note that you contend that Boutique Leisure Ltd wasn't a sponsoring employer of the pension scheme at the time the loans were advance despite a deed being executed admitting Boutique Leisure as a participating employer with effect from 31 January 2009. The deed in question is dated 5 January 2009 and it is this deed that you claim is/was (?) ineffective.

What I think needs to be clarified here is what is meant by the word "*ineffective*". It is a fact that a deed was executed on 5 January 2009 which admitted Boutique Leisure Ltd as a participating employer of the pension scheme with effect from 31 January 2008, which means at face value for the purposes of Finance Act 2004 (FA04) Boutique Leisure Ltd became a sponsoring employer on 31 January 2009.

The definition of sponsoring employer is under section 150 (6) FA04 and states:-

***"In this Part "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 so as to provide benefits."***

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This scheme is an **occupational pension scheme** so HMRC interpret s.150 (6) as meaning that any members of the pension scheme, that are also employees of the pension scheme's sponsoring employer(s), could be provided with pension benefits for service provided the scheme is capable etc. Also that the pension scheme is capable of providing benefits for employees of a sponsoring employer that are not members but who could be invited/admitted to membership of the pension scheme.

Paragraph 16 of the scheme rules states that :-

**16 - Admission to Membership**

16.1 The Trustees may in their absolute discretion admit as a member:

16.1.1 any employee of a Participating Employer

16.1.2 any other person whose admission is in the opinion of the Trustees consistent with the status as a registered pension scheme.

Mr J Tierney is a member of The Tierney Family Trust and has already accrued benefits in that pension scheme from other employments but he is apparently not an employee of Boutique Leisure Ltd, which means he is not entitled to accrue benefits in the pension scheme in respect of any non-employment association he has or had with Boutique Leisure Ltd.

However, just because Mr J Tierney isn't entitled to benefits from the pension scheme in respect of the Boutique Leisure Ltd participation, it doesn't mean the pension scheme isn't capable of providing benefits for employees of Boutique Leisure Ltd.

I can see nothing in FA04 or the scheme rules that makes the pension scheme incapable of providing benefits if the relevant funding was made etc.

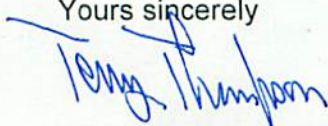
I therefore contend that Boutique Leisure Ltd is in fact a sponsoring employer of the pension scheme (with effect from 31 January 2009) and that the so called *ineffectiveness* of the deed only relates to the existing members of the pension scheme that are not employees of Boutique Leisure Ltd.

As such I contend that all three loans, £100k, £8k & £5k, are in fact unauthorised payments subject to tax under section 208 & 239 FA04 and late payment interest.

I appreciate that you will need to consider the points I have raised but if I don't hear from you by 2 September 2013 I will consider issuing a closing Notice and raised the appropriate assessments. Upon receipt of an assessment the taxpayers' are entitled to ask for an Independent Review and/or appeal to a Tax Tribunal.

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

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