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*Changes to legislation: There are currently no known outstanding effects  
for the Finance Act 2017, SCHEDULE 6. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 6

Section 15

#### EMPLOYMENT INCOME PROVIDED THROUGH THIRD PARTIES

##### *Introductory*

- 1 Part 7A of ITEPA 2003 (employment income provided through third parties) is amended in accordance with paragraphs 2 to 11.

##### *Meaning of “relevant step”*

- 2 In section 554A(2) (meaning of “relevant”) at the end insert “(including such a step where the taking of the step, or some aspect of the taking of the step, constitutes a breach of trust or is a constituent part of a breach of trust, and even if the step or aspect is void as a result of breach of trust).”

##### *Loans: transferring, releasing or writing off*

- 3 (1) Section 554C (relevant steps: payment of sum, transfer of asset etc.) is amended as follows.
- (2) In subsection (1), after paragraph (a) insert—
- “(aa) acquires a right to a payment of a sum of money, or to a transfer of assets, where there is a connection (direct or indirect) between the acquisition of the right and—
    - (i) a payment made, by way of a loan or otherwise, to a relevant person, or
    - (ii) a transfer of assets to a relevant person,
  - (ab) releases or writes off the whole or a part of—
    - (i) a loan made to a relevant person, or
    - (ii) an acquired right of the kind mentioned in paragraph (aa),”.
- (3) After subsection (3) insert—
- “(3A) For the purposes of subsection (1) “loan” includes—
- (a) any form of credit, and
  - (b) a payment that is purported to be made by way of a loan.
- (3B) Subsection (3C) applies where a person (“T”) acquires from another person (“L”) (whether or not for consideration)—
- (a) a right to payment of the whole or part of a loan where T is the person liable (at the time of the acquisition of the right) to repay the loan, or
  - (b) a right to payment of a sum of money, or to a transfer of assets, where T is the person liable (at the time of the acquisition of the right) to pay the sum, or transfer the assets.

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- (3C) L is to be treated for the purposes of subsection (1)(ab) as releasing—
- (a) in a case within subsection (3B)(a), the loan or the relevant part of it;
  - (b) in a case within subsection (3B)(b), the right or the relevant part of it.”

4 In section 554A(4) (non-application of Chapter 2 where relevant step taken on or after A's death)—

- (a) omit “within section 554B”, and
- (b) at the end insert “if—
  - (a) the relevant step is within section 554B, or
  - (b) the relevant step is within section 554C by virtue of subsection (1)(ab) of that section.”

5 After section 554O insert—

**“554OA Exclusions: transfer of employment-related loans**

- (1) Chapter 2 does not apply by reason of a relevant step taken by a person (“P”) if—
  - (a) the step is acquiring a right to payment of an amount equal to the whole or part of a payment made by way of a loan to a relevant person (the “borrower”),
  - (b) the loan, at the time it was made, was an employment-related loan,
  - (c) at the time the relevant step is taken, the section 180 threshold is not exceeded in relation to the loan,
  - (d) at the time the relevant step is taken, the borrower is an employee, or a prospective employee, of P, and
  - (e) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (2) For the purposes of this section, the section 180 threshold is not exceeded in relation to a loan if, at all times in the relevant tax year—
  - (a) the amount outstanding on the loan, or
  - (b) if two or more employment-related loans are made by the same employer, the aggregate of the amount outstanding on them,
 does not exceed the amount specified at the end of section 180(2) (normal threshold for benefit of a loan to be treated as earnings).
- (3) Subsection (4) applies if—
  - (a) two or more employment-related loans are made by the same employer, and
  - (b) during the relevant tax year, a person acquires a right to payment of an amount (the “transfer amount”) equal to the whole or part of the payment made by way of any of the loans.
- (4) The transfer amount is to be treated as an “amount outstanding” on that loan for the purposes of subsection (2)(b).
- (5) In this section—
  - (a) “employment-related loan” has the same meaning as it has for the purposes of Chapter 7 of Part 3;

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(b) “relevant tax year” means the tax year in which the relevant step is taken.”

6 In section 554Z(10)(b) (interpretation: relevant step which involves a sum of money), after “section 554C(1)(a)” insert “ to (ab) ”.

7 In section 554Z12(1) (relevant step taken after A's death etc.), after “554C” insert “ , by virtue of subsection (1)(a) or (b) to (e) of that section, ”.

*Exclusions: relevant repayments*

8 After section 554R insert—

**“554RA Exclusions: relevant repayments**

(1) This section applies (subject to subsection (5)) if—

- (a) a right to repayment of principal under a relevant loan (the “repayment right”) is held by or on behalf of a person (“P”), and
- (b) on or after 9 December 2010, a sum of money (the “repayment sum”) is acquired by or on behalf of P by way of repayment of principal under the relevant loan.

(2) In this section “relevant loan” means a loan made on or after 6 April 1999.

(3) Subsection (4) applies if—

- (a) on its acquisition, the repayment sum is the subject of a relevant step within section 554B taken by P, or
- (b) for the sole purpose of the acquisition, the making of the payment of the repayment sum is a relevant step within section 554C(1)(a).

(4) Chapter 2 does not apply by reason of the relevant step if, on its acquisition, the repayment sum is held by or on behalf of P on the same basis as that on which the repayment right was held by or on behalf of P immediately before the acquisition.

(5) This section does not apply where there is any connection (direct or indirect) between the acquisition by or on behalf of P of the repayment sum and a tax avoidance arrangement (other than the arrangement under which the relevant loan was made).”

*Exclusions: payments in respect of a tax liability*

9 After section 554X insert—

**“554XA Exclusions: payments in respect of a tax liability**

(1) Chapter 2 does not apply by reason of a relevant step which is the payment of a sum of money if—

- (a) the payment is a relevant tax payment, or
- (b) where the payment is not a relevant tax payment—
  - (i) the payment is made to a person for the purpose of the person making a relevant tax payment,
  - (ii) the person makes a relevant tax payment of an amount equal to the amount of the first payment, and

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- (iii) the relevant tax payment is made before the end of the period of 60 days beginning with the day on which the first payment is made.
- (2) “Relevant tax payment” means a payment made to Her Majesty's Revenue and Customs in respect of a relevant liability for—
  - (a) income tax,
  - (b) national insurance contributions,
  - (c) inheritance tax, or
  - (d) corporation tax.
- (3) But a provisional payment of tax (see section 554Z11D) is not a relevant tax payment.
- (4) A liability is a “relevant liability” if—
  - (a) under the terms of an agreement for the discharge of the liability, or
  - (b) by way of a decision on an application under this section,
an officer of Revenue and Customs agrees that the liability is to be treated as arising in respect of the relevant arrangement concerned.
- (5) A person may make an application to Her Majesty's Revenue and Customs for a liability to be treated, for the purposes of this section, as arising in respect of the relevant arrangement concerned.
- (6) An application under this section must be made in such form and manner, and contain such information, as may be specified by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs.
- (7) An officer of Revenue and Customs must notify the applicant of the decision on an application under this section.”

#### *Double taxation*

10      For section 554Z5 (overlap with earlier relevant step) substitute—

**“554Z5 Overlap with money or asset subject to earlier tax liability**

- (1) This section applies if there is overlap between—
  - (a) the sum of money or asset (“sum or asset P”) which is the subject of the relevant step, and
  - (b) a sum of money or asset (“sum or asset Q”) by reference to which, on an occasion that occurred before the relevant step is taken, A became subject to a liability for income tax (“the earlier tax liability”).
- (2) But this section does not apply where—
  - (a) the earlier tax liability arose by reason of a step within section 554B taken in a tax year before 6 April 2011, and
  - (b) the value of the relevant step is (or if large enough would be) reduced under paragraph 59 of Schedule 2 to FA 2011.
- (3) Where either the payment condition or the liability condition is met, the value of the relevant step is reduced (but not below nil) by an amount equal to so

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much of the sum of money, or (as the case may be) the value of so much of the asset, as is within the overlap.

- (4) The payment condition is that, at the time the relevant step is taken—
  - (a) the earlier tax liability has become due and payable, and
  - (b) either—
    - (i) it has been paid in full, or
    - (ii) the person liable for the earlier tax liability has agreed terms with an officer of Revenue and Customs for the discharge of that liability.
- (5) The liability condition is that, at the time the relevant step is taken, the earlier tax liability is not yet due and payable.
- (6) For the purposes of this section there is overlap between sum or asset P and sum or asset Q so far as it is just and reasonable to conclude that—
  - (a) they are the same sum of money or asset, or
  - (b) sum or asset P directly, or indirectly, represents sum or asset Q.
- (7) Subsection (8) applies where—
  - (a) the earlier tax liability arose by virtue of the application of this Chapter by reason of an earlier relevant step (the “earlier relevant step”), and
  - (b) reductions were made under this section to the value of the earlier relevant step.
- (8) Where this subsection applies, sum or asset P is treated as overlapping with any other sum of money or asset so far as the other sum of money or asset was treated as overlapping with sum or asset Q for the purposes of this section.
- (9) In subsection (1)(b)—
  - (a) the reference to A includes a reference to any person linked with A, and
  - (b) the reference to a liability for income tax does not include a reference to a liability for income tax arising by reason of section 175 (benefit of taxable cheap loan treated as earnings).
- (10) In subsection (3) the reference to the value of the relevant step is a reference to that value—
  - (a) after any reductions made to it under section 554Z4, this section or 554Z7, but
  - (b) before any reductions made to it under section 554Z6 or 554Z8.
- (11) For the purposes of subsection (4)(b)(i) a person is not to be regarded as having paid any tax by reason only of making—
  - (a) a payment on account of income tax,
  - (b) a payment that is treated as a payment on account under section 223(3) of FA 2014 (accelerated payments), or
  - (c) a payment pending determination of an appeal made in accordance with section 55 of TMA 1970.”

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*“Double taxation: earlier income tax liability*

**554Z11B Earlier income tax liability: application of section 554Z11C**

- (1) Section 554Z11C applies if the conditions in subsections (2) and (3) are met.
- (2) The first condition is that there is overlap between—
  - (a) the sum of money or asset (“sum or asset P”) which is the subject of the relevant step, and
  - (b) a sum of money or asset (“sum or asset Q”) by reference to which, on an occasion that occurred before the relevant step is taken, A became subject to a liability for income tax (“the earlier tax liability”).
- (3) The second condition is that at the time the relevant step is taken—
  - (a) an amount is payable by a person (the “liable person”) in respect of the earlier tax liability, but the whole or part of that amount is unpaid and not otherwise accounted for, and
  - (b) the liable person has not agreed any terms with an officer of Revenue and Customs for the discharge of the earlier tax liability.
- (4) For the purposes of this section there is overlap between sum or asset P and sum or asset Q so far as it is just and reasonable to conclude that—
  - (a) they are the same sum of money or asset, or
  - (b) sum or asset P directly, or indirectly, represents sum or asset Q.
- (5) In subsection (2)(b)—
  - (a) the reference to A includes a reference to any person linked with A, and
  - (b) the reference to a liability for income tax does not include a reference to a liability for income tax arising by reason of section 175 (benefit of taxable cheap loan treated as earnings).

**554Z11C Earlier income tax liability: treatment of payments**

- (1) In this section—
  - (a) “the earlier charge” means so much of the earlier tax liability as relates to the overlap between sum or asset P and sum or asset Q, and
  - (b) “the Chapter 2 overlap charge” means so much of the Chapter 2 tax liability as relates to the overlap between sum or asset P and sum or asset Q.
- (2) The amount of a tax liability that relates to the overlap between sum or asset P and sum or asset Q is to be determined on a just and reasonable basis.
- (3) Subsection (4) applies where, after the relevant step is taken, an amount (the “earlier charge paid amount”) is paid in respect of all or part of—
  - (a) the earlier charge, or
  - (b) any late payment interest in respect of the charge.
- (4) An amount equal to the earlier charge paid amount is treated as a payment on account of—

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- (a) the Chapter 2 overlap charge, or
  - (b) if that charge has been paid in full, any late payment interest payable in respect of the charge.
- (5) Except where subsection (10) applies, subsection (6) applies where an amount (the “Chapter 2 paid amount”) is paid in respect of all or part of—
  - (a) the Chapter 2 overlap charge, or
  - (b) any late payment interest in respect of the charge.
- (6) An amount equal to the Chapter 2 paid amount is treated as a payment on account of—
  - (a) the earlier charge, or
  - (b) if the earlier charge has been paid in full, any late payment interest payable in respect of the charge.
- (7) Subsection (10) applies where—
  - (a) the condition in 554Z11B(2) is met because there is overlap between sum or asset P and each of two or more items within section 554Z11B(2)(b), and
  - (b) an amount (the “Chapter 2 aggregate paid amount”) is paid in respect of all or part of—
    - (i) two or more relevant Chapter 2 overlap charges, or
    - (ii) any late payment interest in respect of any of those charges.
- (8) In subsection (7)(b), “relevant Chapter 2 overlap charge” means so much of the Chapter 2 tax liability as relates to the overlap between sum or asset P and one of those items within section 554Z11B(2)(b).
- (9) For the purposes of subsection (10)—
  - (a) in the case of each of those items, the “earlier charge” in respect of the overlap between sum or asset P and the item is so much of the liability mentioned in section 554Z11B(2)(b) in the case of the item as relates to the overlap, and
  - (b) the Chapter 2 aggregate paid amount is to be allocated, in such proportions as are just and reasonable in all the circumstances, between the earlier charges given by paragraph (a).
- (10) The amount allocated to an earlier charge under subsection (9) is treated as a payment on account of—
  - (a) the earlier charge to which it is allocated, and
  - (b) if the earlier charge has been paid in full, any late payment interest payable in respect of the charge.
- (11) In this section—
  - “late payment interest” means interest payable under—
    - (a) section 86 of TMA 1970,
    - (b) section 101 of FA 2009, or
    - (c) regulation 82 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682);
  - “Chapter 2 tax liability” means the liability for income tax arising by virtue of the application of Chapter 2 by reason of the relevant step.

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#### **554Z11D Earlier income tax liability: provisional payments of tax**

- (1) Subsection (2) applies for the purposes of—
  - (a) section 554Z11B(3)(a), and
  - (b) section 554Z11C(3), (4)(b), (7)(b) and (10)(b).
- (2) A person is not to be regarded as having paid, or otherwise accounted for, any tax by reason only of making a provisional payment of tax, except in accordance with an application granted under section 554Z11E.
- (3) In this Part, “provisional payment of tax” means—
  - (a) a payment on account of income tax,
  - (b) a payment that is treated as a payment on account under section 223(3) of FA 2014 (accelerated payments), or
  - (c) a payment pending determination of an appeal made in accordance with section 55 of TMA 1970.
- (4) The reference in subsection (3)(a) to a payment on account of income tax does not include a reference to a payment treated under section 554Z11C as a payment on account of a tax liability.

#### **554Z11E Application for provisional payments to be treated as payment of tax**

- (1) A person may make an application to Her Majesty's Revenue and Customs for a provisional payment of tax to be treated for the purposes of section 554Z11C as—
  - (a) an earlier charge paid amount,
  - (b) a Chapter 2 paid amount, or
  - (c) a Chapter 2 aggregate paid amount.
- (2) Where an application under subsection (1) is granted, the provisional payment of tax to which it relates may not be repaid.
- (3) An application for approval must be made in such form and manner, and contain such information, as may be specified by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs.
- (4) An officer of Revenue and Customs must notify the applicant of the decision on an application.

#### **554Z11F Provisional payments of tax: further provision**

- (1) This section applies in a case to which section 554Z11C applies (see section 554Z11B(1)).
- (2) If a provisional payment of tax is made in respect of an earlier charge in relation to an overlap, it is to be treated as also being made in respect of the Chapter 2 overlap charge in relation to the overlap.
- (3) If a provisional payment of tax is made in respect of a Chapter 2 overlap charge in relation to an overlap, it is to be treated as also being made in respect of the earlier charge in relation to the overlap.



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- (4) If section 554Z11C(10) applies in a case (see section 554Z11C(7)) and a provisional payment of tax is made in respect of two or more relevant Chapter 2 overlap charges—
  - (a) the amount of the provisional payment of tax is to be allocated, in such proportions as are just and reasonable in all the circumstances, between those relevant Chapter 2 overlap charges, and
  - (b) a provisional payment of tax, equal to the amount allocated to the relevant Chapter 2 overlap charge relating to any particular overlap, is to be treated as also being made in respect of the earlier charge given by section 554Z11C(9) in respect of that overlap.
- (5) Subsection (6) applies if—
  - (a) the provisional payment of tax is repaid, and
  - (b) late payment interest on the earlier charge or the Chapter 2 overlap charge would have accrued during the relevant period if the provisional payment of tax had not been made.
- (6) The late payment interest mentioned in subsection (5) is treated as having accrued as if the provisional payment of tax had not been made.
- (7) For the purposes of subsection (5), the “relevant period” is the period beginning on the day on which the provisional payment of tax is made and ending with the day on which the repayment is made.

#### **554Z11G Earlier income tax liability: supplementary provision**

- (1) This section applies in a case to which section 554Z11C applies (see section 554Z11B(1)).
- (2) Subsection (3) applies where an employer is treated by virtue of section 687A or 695A as making a payment of income (“the notional payment”) by reason of the value of the relevant step, of which sum or asset P is the subject, counting as employment income.
- (3) The reference in section 222 (payments by employer on account of tax where deduction not possible) to the notional payment is to be treated as a reference to that payment reduced by an amount equal to so much of the sum of money or (as the case may be) the value of so much of the asset—
  - (a) as is within the overlap, and
  - (b) in relation to which an amount is treated under section 554Z11C as a payment on account of either the earlier charge or the Chapter 2 overlap charge.
- (3) Subsection (4) applies for the purposes of sections 65(5)(b) and 70(3)(b) of the Inheritance Tax Act 1984 (tax relief for payments which are income of a person for income tax purposes etc).
- (4) The value of the relevant step of which sum or asset P is the subject is to be treated as reduced by an amount equal to so much of the sum of money or (as the case may be) the value of so much of the asset —
  - (a) as is within the overlap, and

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- (b) in relation to which an amount is treated under section 554Z11C as a payment on account of either the earlier charge or the Chapter 2 overlap charge.”

*Amendments to Schedule 2 to FA 2011*

- 12     (1) Paragraph 59 of Schedule 2 to FA 2011 (transitional provision relating to Part 7A of ITEPA 2003) is amended as follows.
- (2) In sub-paragraph (1)(f), after “554Z4” insert “ and 554Z6 ”.
- (3) In the opening words of sub-paragraph (2), after “554Z4” insert “ and 554Z6 ”.

*Commencement*

- 13       Subject to paragraphs 14 to 16, the amendments made by this Schedule to Part 7A of ITEPA 2003 have effect in relation to relevant steps taken on or after 6 April 2017.
- 14       Section 554RA of ITEPA 2003, inserted by paragraph 8 of this Schedule, has effect in relation to relevant steps taken on or after 9 December 2010.
- 15     (1) Paragraph 13 does not apply in relation to the amendment made by paragraph 11 of this Schedule (new sections 554Z11B to 554Z11G of ITEPA 2003).
- (2) Sections 554Z11B to 554Z11D and 554Z11G of ITEPA 2003, inserted by paragraph 11 of this Schedule, have effect in relation to relevant steps taken on or after 6 April 2011.
- (3) Where—
- (a) a relevant step (the “early step”) is taken on or after 9 December 2010 but before 6 April 2011, and
- (b) Chapter 2 of Part 7A of ITEPA 2003 would have applied by reason of the early step had it been taken on or after 6 April 2011 but before 6 April 2017,
- sections 554Z11B to 554Z11D and 554Z11G of ITEPA 2003 have effect in relation to the early step as they have effect in relation to relevant steps taken on or after 6 April 2011.
- 16       The amendments made by paragraph 12 of this Schedule to paragraph 59 of Schedule 2 to FA 2011 have effect in relation to chargeable steps (as defined in that paragraph) taken on or after 6 April 2017.

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