SCHEDULES

SCHEDULE 1

EMPLOYMENT INCOME PROVIDED THROUGH THIRD PARTIES

PART 2

CLOSE COMPANIES

Application of Chapter 2 of Part 7A to ITEPA 2003

2 In Part 7A of ITEPA 2003 (employment income provided through third parties), after section 554A (application of Chapter 2) insert—

"Application: close companies

554AA Application of Chapter 2: close companies

(1) Chapter 2 applies if—

(a) there is an arrangement ("the relevant arrangement") to which an individual ("A") is a party or which otherwise (wholly or partly) covers or relates to A,

(b) it is reasonable to suppose that, in essence—

(i) the relevant arrangement, or

(ii) the relevant arrangement so far as it covers or relates to A,

is (wholly or partly) a means of providing, or is otherwise concerned (wholly or partly) with the provision of, A-linked payments or benefits or loans,

(c) a close company ("B") enters into a relevant transaction (see section 554AB),

(d) it is reasonable to suppose that, in essence—

(i) the relevant transaction is entered into (wholly or partly) in pursuance of the relevant arrangement, or

(ii) there is some other connection (direct or indirect) between the relevant transaction and the relevant arrangement,

(e) at the time B enters into the relevant transaction, or at any earlier time in the 3 years ending with the date of the transaction, A is a director or an employee of B,

(f) at the time B enters into the relevant transaction, or at any earlier time in the 3 years ending with the date of the transaction, A has a material interest in B (see section 554AE),

(g) a relevant step is taken by a relevant third person,

(h) it is reasonable to suppose—

(i) that the sum of money or asset which is the subject of the relevant step represents (directly or indirectly), or has arisen or derives from, the sum of money or asset which is the subject of the relevant transaction, or

(ii) that the sum of money or asset which is the subject of the relevant transaction represents (directly or indirectly), or has arisen or derives from, the sum of money or asset which is the subject of the relevant step, and

(i) there is a time in the relevant period when the main purpose, or one of the main purposes, of operating, implementing, maintaining or terminating the relevant arrangement so far as it covers or relates to—

(i) the relevant transaction, and the relevant step so far as related to the relevant transaction, or

(ii) the relevant step, and the relevant transaction so far as related to the relevant step,

is the avoidance of? income tax, national insurance contributions, corporation tax or a charge to tax under section 455 of CTA 2010.

(2) In this section "close company" includes a company that would be a close company but for section 442(a) of CTA 2010 (exclusion of companies not resident in the United Kingdom).

(3) For the purposes of subsection (1)(b), a payment or benefit or loan is "A-linked" if—

(a) it is being provided to A, or a person chosen by A or within a class of persons chosen by A,

(b) it is being provided to a person on A's behalf, or at A's direction or request, or

(c) it is being provided to a person linked with A and it is reasonable to suppose that the main reason, or one of the main reasons, for it being provided is that the person is linked with A.

(4) For the purposes of subsection (1)(i), the "relevant period" consists of the time of the relevant transaction, the time of the relevant step, the times around each of those two times, and any other times between those two times.

(5) Subsections (6) and (7) apply where—

(a) a payment to a person other than A, or to A as a trustee, is of earnings from—

(i) A's employment with B, or

(ii) A's office as a director of B, and

(b) the earnings are, in whole or part, charged to tax under the employment income Parts otherwise than by virtue of this Part,

and for this purpose it does not matter whether all or some only or none of the tax is paid (but see sections 554Z5 and 554Z11B).

(6) For the purposes of subsection (7), an arrangement is a "redirected-earnings arrangement" if it (wholly or partly) covers or relates to redirected earnings; and for the purposes of this subsection and subsection (7) "redirected earnings" means—

(a) the payment mentioned in subsection (5)(a), or

(b) any sum or other property which (directly or indirectly)—

(i) represents, or

(ii) is derived from,

that payment.

(7) The circumstances mentioned in subsection (5)—

(a) do not prevent a redirected-earnings arrangement being within subsection (1)(a),

(b) do not prevent payments or benefits or loans being A-linked for the purposes of subsection (1)(b) where there is use of redirected earnings for the provision of the whole, or part, of the payments or benefits or loans, and

(c) do not prevent the making of the payment mentioned in subsection (5)(a) being entry into a relevant transaction.

(8) In this section and in section 554AB "relevant third person" means—

(a) A acting as a trustee,

(b) B acting as a trustee, or

(c) any person other than A or B.

(9) See also sections 554AD to 554AF (further interpretation and supplementary provision).

554AB Meaning of "relevant transaction"

(1) For the purposes of section 554AA(1), B enters into a relevant transaction if—

(a) B enters into a transaction within subsection (2), and

(b) the transaction is not an excluded transaction (see section 554AC).

(2) B enters into a transaction within this subsection if B—

(a) pays a sum of money to a relevant third person (see section 554AA(8)),

(b) 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 third person, or

(ii) a transfer of assets to a relevant third person,

(c) releases or writes off the whole or a part of—

(i) a loan made to a relevant third person, or

(ii) an acquired right of the kind mentioned in paragraph (b),

(d) transfers an asset to a relevant third person,

(e) takes a step by virtue of which a third person acquires an asset within subsection (4),

(f) makes available a sum of money or asset for use, or makes it available under an arrangement which permits its use—

(i) as security for a loan made or to be made to a relevant third person, or

(ii) otherwise as security for the meeting of any liability, or the performance of any undertaking, which a relevant third person has or will have, or

(g) grants to a relevant third person a lease of any premises the effective duration of which is likely to exceed 21 years.

(3) For the purposes of subsection (2) "loan" includes—

(a) any form of credit, and

(b) a payment that is purported to be made by way of a loan.

(4) The following assets are within this subsection—

(a) securities,

(b) interests in securities, and

(c) securities options,

as defined in section 420 for the purposes of Chapters 1 to 5 of Part 7; and in subsection (2)(e) "acquires" is to be read in accordance with section 421B(2)(a).

(5) For the purposes of subsection (2)(f)—

(a) references to making a sum of money or asset available are references to making it available in any way, however informal,

(b) it does not matter if the relevant third person has no legal right to have the sum of money or asset used as mentioned, and

(c) it does not matter if the sum of money or asset is not actually used as mentioned.

(6) Subsections (7) and (8) apply, for the purposes of subsection (2)(g), for the purpose of determining the likely effective duration of a lease of any premises granted to a relevant third person ("the original lease").

(7) If there are circumstances which make it likely that the original lease will be extended for any period, the effective duration of the original lease is to be determined on the assumption that the original lease will be so extended.

(8) Further, if—

(a) the relevant third person, A or a person linked with A is, or is likely to become, entitled to a later lease, or the grant of a later lease, of the same premises, or

(b) it is otherwise likely that the relevant third person, A or a person linked with A will be granted a later lease of the same premises,

the original lease is to be treated as continuing until the end of the later lease (and subsection (7) also applies for the purpose of determining the duration of the later lease).

(9) In this section "lease" and "premises" have the same meaning as they have in Chapter 4 of Part 3 of ITTOIA 2005.

554AC Meaning of "excluded transaction"

(1) In section 554AB "excluded transaction" means—

(a) a distribution made by B,

(b) a transaction that—

(i) is entered into by B in the ordinary course of B's business, and

(ii) is on terms that would have been made between persons not connected with each other dealing at arm's length, or

(c) a transaction entered into in order to facilitate the disposal, on terms that would have been made between persons not connected with each other dealing at arm's length, of shares in B.

(2) But the distribution or transaction is not an "excluded transaction" if the avoidance of tax is the main purpose, or one of the main purposes, of (as the case may be)—

(a) making the distribution, or

(b) the transaction.

(3) Part 23 of CTA 2010 has effect for determining the meaning of "distribution" in this section as if—

(a) section 1000(1) of CTA 2010 included a paragraph specifying any distribution made in a winding up of the company, and

(b) sections 1030 to 1030B of that Act were omitted.

554AD Section 554AA: meaning of "director"

(1) For the purposes of section 554AA(1)(e) "director" means—

(a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,

(b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and

(c) in relation to a company whose affairs are managed by the members themselves, a member of the company,

and includes any person in accordance with whose directions or instructions the directors of the company (as defined in this subsection) are accustomed to act.

(2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.

(3) For the purposes of section 5 as it applies to this Part, a person who is a director within the meaning of subsection (1) is to be treated (where it would not otherwise be the case) as holding an office.

554AE Section 554AA: meaning of "material interest"

(1) Section 68 (meaning of "material interest" in a company) applies for the purposes of section 554AA and, subject to subsection (2), does so as it applies for the purposes of the benefits code.

(2) In section 68 as it applies for the purposes of section 554AA—

(a) each of the following is to be treated as "an associate" of A—

(i) a person ("the promoter") who, for the purposes of Part 5 of FA 2014, is carrying on business as a promoter in relation to the relevant arrangement, and

(ii) where the promoter is a company, any company which is an associated company of the promoter;

(b) "participator"—

(i) in relation to a close company, means a person who is a participator in relation to the company for the purposes of section 455 of CTA 2010 (see sections 454 and 455(5) of that Act), and

(ii) in relation to a company which would be a close company if it were a UK resident company, means a person who would be such a participator if the company were a close company.

(3) In subsection (2)(a)(ii) "associated company" has the same meaning as it has for the purposes of Part 10 of CTA 2010 (see section 449 of that Act).

554AF Section 554AA: supplementary

(1) Section 554AA(1) is subject to subsection (2) and sections 554E to 554Y.

(2) Chapter 2 does not apply by reason of section 554AA(1) in relation to a relevant step taken on or after A's death 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.

(3) In section 554AA(1)(a) and (b) references to A include references to a person linked with A.

(4) For the purposes of section 554AA(1)(b) it does not matter if the relevant arrangement does not include details of the steps which will or may be taken in connection with providing, in essence, payments or benefits or loans as mentioned (for example, details of any sums of money or assets which will or may be involved or details of how or when or by whom or in whose favour any step will or may be taken).

(5) For the purposes of section 554AA(1)(b) and (d) in particular, all relevant circumstances are to be taken into account in order to get to the essence of the matter."

Double taxation

3 (1) In section 554Z2 of ITEPA 2003 (value of relevant step to count as employment income), after subsection (1) insert—

"(1AA) But subsection (1) is subject to section 554Z2A (close companies)."

(2) After section 554Z2 of ITEPA 2003, insert—

"**554Z2A Exception to section 554Z2(1): close companies**

(1) Section 554Z2(1) does not apply in the case of a relevant step if—

(a) this Chapter applies in the case of the relevant step only by reason of section 554AA (close companies),

(b) the relevant step is a step within section 554B, 554C or 554D,

(c) the relevant step gives rise to a charge to tax under either—

(i) section 455 of CTA 2010 by virtue of section 459 of that Act (loans treated as made to participator), or

(ii) section 415 of ITTOIA 2005 (release of loan to participator in a close company), and

(d) in a case within paragraph (c)(i), either the payment condition or the consent condition is met in relation to the charge under section 455 of CTA 2010.

(2) The payment condition is met in relation to a charge to tax under section 455 of CTA 2010 if—

(a) the net section 455 charge is paid in full on or before the due date, or

(b) the net section 455 charge is nil.

(3) The "net section 455 charge" means the amount of the charge to tax under section 455 of CTA 2010 less the amount of section 458 relief from that charge.

(4) In subsection (3) "section 458 relief" means relief given under section 458 of that Act—

(a) in respect of a repayment made, or a release or writing-off occurring, on or before the due date, and

(b) on a claim made on or before the due date.

(5) The consent condition is met in relation to a charge to tax under section 455 of CTA 2010 if—

(a) the charge to tax is reported, in a company tax return of B's, as required under Schedule 18 to FA 1998 (company tax returns etc),

(b) the payment condition is not met in relation to that charge, and

(c) an officer of Revenue and Customs considers that section 554Z2(1) should not apply in the case of the relevant step concerned.

(6) In this section, references to the "due date" in relation to a charge to tax under section 455 of CTA 2010 are references to the day on which the tax is due and payable (see section 455(3) of CTA 2010)."

4 (1) Schedule 11 to F(No.2)A 2017 (employment income provided through third parties: loans etc outstanding on 5 April 2019) is amended as follows.

(2) Before paragraph 37 (but after the italic heading preceding that paragraph) insert—

"36A (1) Sub-paragraphs (2) to (8) apply if—

(a) a person ("P") would, apart from this paragraph, be treated as taking a relevant step by paragraph 1 by reason of a loan made to a relevant person, and

(b) the loan gives rise to a charge to tax under section 455 of CTA 2010 by virtue of section 459 of that Act (loans treated as made to participators).

(2) In this paragraph "the key date" means the later of—

(a) 5 April 2019, and

(b) the day on which the tax referred to in sub-paragraph (1)(b) is due and payable (see section 455(3) of CTA 2010).

(3) Paragraph 1(2) has effect as if it treated P as taking the relevant step immediately before the end of the key date, but this is subject to sub-paragraphs (4) and (5).

(4) Paragraph 1(1) does not apply in the case of the loan if the payment condition is met.

(5) Paragraph 1(1) does not apply in the case of the loan if—

(a) the payment condition is not met,

(b) the charge to tax mentioned in sub-paragraph (1)(b) is reported, in a company tax return of B's, as required under Schedule 18 to FA 1998 (company tax returns etc), and

(c) an officer of Revenue and Customs considers that paragraph 1(1) should not apply in the case of the loan.

(6) The payment condition is met if—

(a) the net section 455 charge is paid in full on or before the key date, or

(b) the net section 455 charge is nil.

(7) The "net section 455 charge" is the amount of the tax referred to sub-paragraph (1)(b) less the amount of section 458 relief from that tax.

(8) In sub-paragraph (7) "section 458 relief" means relief given under section 458 of CTA 2010—

(a) in respect of a repayment made, or a release or writing-off occurring, on or before the key date, and

(b) on a claim made on or before the key date."