
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 12

TRADING INCOME PROVIDED THROUGH THIRD PARTIES: LOANS ETC OUTSTANDING ON 5 APRIL 2019

1 In Schedule 12 to F(No.2)A 2017 (trading income provided through third parties: loans etc outstanding on 5 April 2019), after paragraph 20 insert—

“Duty to provide loan charge information to HMRC

- 21 (1) Paragraph 22 applies if one of the following conditions is met.
- (2) The first condition is that—
- (a) a loan or quasi-loan in relation to which paragraph 1(2) applies is treated as a “relevant benefit” for the purposes of sections 23A to 23H of ITTOIA 2005, and
 - (b) section 23E of ITTOIA 2005 applies in relation to the relevant benefit (see section 23A of that Act).
- (3) The second condition is that—
- (a) an application is made under paragraph 20(1) by reference to a loan or quasi-loan in relation to which paragraph 1(2) applies,
 - (b) a favourable decision is made on the application before 6 April 2019, and
 - (c) the first condition is not met in relation to the loan or quasi-loan.
- (4) Paragraph 22 does not apply in a case if—
- (a) a person agrees, with an officer of Revenue and Customs, terms for the discharge of liability for income tax arising because of the application of section 23E of ITTOIA 2005,
 - (b) the terms cover all liability (if any) arising because of the application of that section by reference to a loan or quasi-loan in relation to which paragraph 1(2) applies, and
 - (c) the terms are agreed before 1 October 2019.
- 22 (1) T, or T's personal representatives, must provide the loan charge information (see paragraph 23(1)) to the Commissioners for Her Majesty's Revenue and Customs.
- (2) The loan charge information must be provided—
- (a) after 5 April 2019, and
 - (b) before 1 October 2019.
- (3) The loan charge information must be provided in such form and manner as may be specified by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, SCHEDULE 2. (See end of Document for details)

(4) In this paragraph and in paragraph 23, “T” is the person mentioned in section 23A(2) of ITTOIA 2005.

“Loan charge information”

23 (1) For the purposes of paragraph 22, the “loan charge information” consists of—

- (a) T's name and, if T's personal representatives are providing the information, their names,
- (b) the address and telephone number, and e-mail address (if any), of each person providing the information,
- (c) T's national insurance number (if any),
- (d) the unique taxpayer reference number (if any) allocated to T by HMRC,
- (e) the name of the arrangement mentioned in section 23A(3)(a) of ITTOIA 2005,
- (f) the reference number (if any) allocated to the arrangement by HMRC under section 311 of FA 2004 (disclosure of tax avoidance schemes: arrangements to be given reference number),
- (g) any other reference number allocated by HMRC in connection with the arrangement or with the loan or quasi-loan mentioned in paragraph 21(2) or (3),
- (h) if the loan or quasi-loan mentioned in paragraph 21(2) or (3) is made to someone other than T, the name of the person to whom it is made,
- (i) if a person has agreed terms with an officer of Revenue and Customs for the partial discharge of the liability for income tax arising because of the application of section 23E of ITTOIA 2005 in relation to the loan or quasi-loan mentioned in paragraph 21(2) or (3), the date of that agreement and the amount of the liability to which it relates,
- (j) if the condition in paragraph 21(2) or (3) is met by reference to a loan, the loan payment information (see sub-paragraph (2)), and
- (k) if the condition in paragraph 21(2) or (3) is met by reference to a quasi-loan, the quasi-loan payment information (see sub-paragraph (3)).

(2) The “loan payment information”, in relation to a loan, consists of statements of the following—

- (a) whether the loan is an approved fixed term loan,
- (b) the initial principal amount of the loan,
- (c) the amount that has become principal under the loan, otherwise than by capitalisation of interest, in each relevant tax year,
- (d) the amount of principal under the loan repaid in each relevant tax year, ignoring any repayments not in money made on or after 5 December 2016,
- (e) the details of any repayment that is to be disregarded under paragraph 3(4),

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, SCHEDULE 2. (See end of Document for details)

- (f) the amount of principal under the loan that has been released or written off in each relevant tax year,
 - (g) whether any liability for income tax arising because of the application of section 23E of ITTOIA 2005 by reason of the release or writing-off has been paid, and
 - (h) any amount released that has, in accordance with section 97 of ITTOIA 2005, been brought into account as a receipt in calculating the profits of the relevant trade.
- (3) The “quasi-loan payment information”, in relation to a quasi-loan, consists of statements of the following—
- (a) the amount equal to the value of the acquired debt,
 - (b) the amount equal to the value of the additional debts acquired in each relevant tax year,
 - (c) the amount by which the initial debt amount has been reduced by way of repayment in each relevant tax year, ignoring any repayments not in money made on or after 5 December 2016,
 - (d) where the acquired debt or an additional debt is a right to a transfer of assets, and the assets have been transferred, the amount of the market value of the assets at the time of the transfer,
 - (e) the details of any repayment that is to be disregarded under paragraph 9(5),
 - (f) the amount by which the initial debt amount has been reduced by release or writing off in each relevant tax year,
 - (g) whether any liability for income tax arising because of the application of section 23E of ITTOIA 2005 by reason of the release or writing-off has been paid, and
 - (h) any amount released that has, in accordance with section 97 of ITTOIA 2005, been brought into account as a receipt in calculating the profits of the relevant trade.
- (4) In this paragraph “relevant tax year” in relation to a loan, or a quasi-loan, means—
- (a) the tax year in which the loan or quasi-loan was made, and
 - (b) each subsequent tax year.
- (5) In sub-paragraph (3), “acquired debt”, “additional debt” and “initial debt amount” have the same meaning as in paragraph 9.
- (6) In this paragraph and in paragraphs 26 to 29, “HMRC” means Her Majesty's Revenue and Customs.
- 24 The Commissioners for Her Majesty's Revenue and Customs may by regulations amend paragraph 23 so as to—
- (a) add, remove or amend an entry in a list of information, and
 - (b) make incidental provision.

Duty to provide loan charge information: penalties

- 25 (1) A person who fails to comply with paragraph 22 is liable to a penalty of £300.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, SCHEDULE 2. (See end of Document for details)

- (2) Sub-paragraph (3) applies if the failure continues after the date on which a penalty is imposed under sub-paragraph (1) in respect of the failure.
 - (3) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day, up to a maximum of 90 days, on which the failure continues.
- 26 (1) This paragraph applies if—
- (a) in complying with the duty under paragraph 22, a person provides inaccurate information, and
 - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.
- (3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (4) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform HMRC at that time.
- (5) Condition C is that the person—
- (a) discovers the inaccuracy some time later, and
 - (b) fails to take reasonable steps to inform HMRC.
- (6) The person is liable to a penalty not exceeding £3000.
- (7) Where the information contains more than one inaccuracy, a penalty is payable for each inaccuracy.

Penalties under paragraph 25: reasonable excuse

- 27 (1) Liability to a penalty under paragraph 25 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
 - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure, and
 - (c) where the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Penalties under paragraphs 25 and 26: assessment, appeals and enforcement

- 28 (1) Where a person becomes liable for a penalty under paragraph 25 or 26—
- (a) HMRC may assess the penalty, and
 - (b) if they do so, they must notify the person.
- (2) An assessment of a penalty under paragraph 25 must be made before 1 October 2021.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, SCHEDULE 2. (See end of Document for details)

- (3) An assessment of a penalty under paragraph 26 must be made before 1 October 2023.
- 29 (1) A person may appeal against any of the following decisions of an officer of Revenue and Customs—
- (a) a decision that a penalty is payable by that person under paragraph 25 or 26, or
 - (b) a decision as to the amount of such a penalty.
- (2) Notice of an appeal under this paragraph must be given—
- (a) in writing,
 - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 28 was issued, and
 - (c) to HMRC.
- (3) Notice of an appeal under this paragraph must state the grounds of appeal.
- (4) On an appeal under sub-paragraph (1)(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) On an appeal under sub-paragraph (1)(b) that is notified to the tribunal, the tribunal may—
- (a) confirm the decision, or
 - (b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.
- 30 (1) A penalty under paragraph 25 or 26 must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 28 was issued, or
 - (b) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under paragraph 25 or 26 may be enforced as if it were income tax charged in an assessment and due and payable.”

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