

## SCHEDULES

### SCHEDULE 11

Section 34

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

#### PART 1

##### APPLICATION OF PART 7A OF ITEPA 2003

##### *Relevant step*

- 1 (1) A person (“P”) is treated as taking a relevant step for the purposes of Part 7A of ITEPA 2003 if—
- (a) P has made a loan, or a quasi-loan, to a relevant person,
  - (b) the loan or quasi-loan was made on or after 6 April 1999, and
  - (c) an amount of the loan or quasi-loan is outstanding immediately before the end of 5 April 2019.
- (2) P is treated as taking the step immediately before—
- (a) the end of the approved repayment date, if P has made a loan which is an approved fixed term loan on 5 April 2019, or
  - (b) the end of 5 April 2019, in any other case.
- (3) Where P is treated by this paragraph as taking a relevant step, references to “the relevant step” in section 554A(1)(e)(i) and (ii) of ITEPA 2003 have effect as if they were references to the step of making the loan or, as the case may be, quasi-loan.
- (4) For the purposes of section 554Z3(1) of ITEPA 2003 (value of relevant step), the step is to be treated as involving a sum of money equal to the amount of the loan or quasi-loan that is outstanding at the time P is treated as taking the step.
- (5) Subsections (2) and (3) of section 554C of ITEPA 2003 (“relevant person”) apply for the purposes of this Schedule as they apply for the purposes of that section.
- (6) Sub-paragraph (1) is subject to paragraphs 23 and 24 (accelerated payments).
- (7) For the purposes of this paragraph, whether an amount of a loan or quasi-loan is outstanding at a particular time—
- (a) is to be determined in accordance with the following provisions of this Schedule, and
  - (b) does not depend on the loan or quasi-loan subsisting at that time.
- (8) References in this Schedule and in Part 7A of ITEPA 2003 to a relevant step within paragraph 1 of this Schedule are to be read as references to a relevant step which a person is treated by this paragraph as taking.

*Meaning of “loan”, “quasi-loan” and “approved repayment date”*

- 2 (1) In this Part of this Schedule “loan” includes—
- (a) any form of credit;
  - (b) a payment that is purported to be made by way of a loan.
- (2) For the purposes of paragraph 1, P makes a “quasi-loan” to a relevant person if (and when) P acquires a right (the “acquired debt”)—
- (a) which is a right to a payment or a transfer of assets, and
  - (b) in respect of which the condition in sub-paragraph (3) is met.
- (3) The condition is met in relation to a right if there is a connection (direct or indirect) between the acquisition of the right and—
- (a) a payment made, by way of a loan or otherwise, to the relevant person, or
  - (b) a transfer of assets to the relevant person.
- (4) Where a quasi-loan or a loan made by P to a relevant person is replaced, directly or indirectly, by a loan or another loan (the “replacement loan”), references in paragraph 1 to the loan are references to the replacement loan.
- (5) Where a loan or a quasi-loan made by P to a relevant person is replaced, directly or indirectly, by a quasi-loan or another quasi-loan (the “replacement quasi-loan”), references in paragraph 1 to the quasi-loan are references to the replacement quasi-loan.
- (6) In this Part of this Schedule, “approved repayment date”, in relation to an approved fixed term loan, means the date by which, under the terms of the loan at the time of making the application for approval under paragraph 20, the whole of the loan must be repaid.

*Meaning of “outstanding”: loans*

- 3 (1) An amount of a loan is “outstanding” for the purposes of paragraph 1 if the relevant principal amount exceeds the repayment amount.
- (2) In sub-paragraph (1) “relevant principal amount”, in relation to a loan, means the total of—
- (a) the initial principal amount lent, and
  - (b) any sums that have become principal under the loan, otherwise than by capitalisation of interest.
- (3) In sub-paragraph (1) “repayment amount”, in relation to a loan, means the total of—
- (a) the amount of principal under the loan that has been repaid before 17 March 2016, and
  - (b) payments in money made by the relevant person on or after 17 March 2016 by way of repayment of principal under the loan.
- 4 (1) A payment is to be disregarded for the purposes of paragraph 3(3)(b) if—
- (a) there is any connection (direct or indirect) between the payment and a tax avoidance arrangement (other than the arrangement under which the loan was made), or
  - (b) the payment, or a sum or asset directly or indirectly representing the payment, is the subject of a relevant step (as defined in section 554A(2) of ITEPA 2003) that is taken—

- (i) after the payment is made, but
    - (ii) before the end of the relevant date.
  - (2) But a payment is not to be disregarded under sub-paragraph (1)(b) if, by the end of the relevant date, each relevant tax liability has been paid in full.
  - (3) For the purposes of this paragraph, each of the following is a “relevant tax liability”—
    - (a) any liability for income tax arising by virtue of the application of Chapter 2 by reason of the relevant step mentioned in sub-paragraph (1)(b), and
    - (b) where section 554Z6 of ITEPA 2003 (overlap with certain earnings) applies because that relevant step gives rise to relevant earnings for the purposes of that section, any liability for income tax in respect of those relevant earnings.
  - (4) In this paragraph, “relevant date” means—
    - (a) the approved repayment date, if P has made a loan which is an approved fixed term loan on 5 April 2019, or
    - (b) 5 April 2019, in any other case.
  - (5) Sub-paragraph (6) applies if a payment is disregarded under sub-paragraph (1)(b).
  - (6) The value of the relevant step treated as taken by paragraph 1 is not reduced under section 554Z5(3) of ITEPA 2003 (overlap with money or asset subject to earlier tax liability) by the amount of the sum, or the value of the asset, which is the subject of the relevant step mentioned in sub-paragraph (1)(b) unless the payment condition is met by reason of section 554Z5(4)(a) and (b)(ii) being met.
- 5
- (1) This paragraph applies where—
    - (a) a person (“P”) has made a loan to a relevant person,
    - (b) the loan was made on or after 6 April 1999, and
    - (c) before the end of 5 April 2019, A or B acquires (whether or not for consideration) a right to payment of the whole or part of the loan.
  - (2) The amount of the loan in respect of which A or B acquires a right to payment is to be treated—
    - (a) for the purposes of paragraph 1(1) as an amount, of the loan made by P to the relevant person, that is outstanding immediately before the end of 5 April 2019;
    - (b) for the purposes of paragraph 1(4) and section 554Z3(1) of ITEPA 2003, as an amount of the loan that is outstanding at the time P is treated as taking the relevant step under paragraph 1(1).
  - (3) Where a quasi-loan or a loan made by P to a relevant person is replaced, directly or indirectly, by a loan or another loan (the “replacement loan”), references in sub-paragraphs (1) and (2) to the loan are references to the replacement loan.

*Meaning of “outstanding”: loans in currencies other than sterling*

- 6
- (1) In paragraphs 7 to 10 “the loan currency”, in relation to a loan, means the currency in which the initial principal amount of the loan is denominated (whether or not that amount is paid in that currency).
  - (2) For the purposes of paragraphs 7 to 10, the value of an amount in a particular currency is to be determined by reference to an appropriate spot rate of exchange.

- 7 (1) This paragraph applies in relation to a loan where the loan currency is a currency other than sterling.
- (2) But this paragraph does not apply if paragraph 10 applies in relation to the loan.
- (3) The amount of the loan that is outstanding, at the time P is treated as taking the relevant step, is to be calculated in sterling as follows—
- Step 1*  
 Calculate, in the loan currency, the amount that is outstanding at that time.
- Step 2*  
 Take the value in sterling, at that time, of that amount.
- (4) See paragraph 8 for provision about repayments made in a currency other than the loan currency.

*Repayments in currencies other than the loan currency*

- 8 (1) This paragraph applies in relation to a loan where—
- (a) payments in money are made by way of repayment of principal under the loan, and
- (b) some or all of the payments are made in a currency other than the loan currency.
- (2) But this paragraph does not apply if paragraph 10 applies in relation to the loan.
- (3) For the purposes of calculating the repayment amount in relation to the loan, the amount of each of the payments referred to in sub-paragraph (1)(b) is an amount equal to its value in the loan currency on the date it is made.

*Loans made in a depreciating currency*

- 9 (1) Paragraph 10 applies in relation to a loan where—
- (a) the loan currency is a currency other than sterling, and
- (b) it is reasonable to suppose that the main reason, or one of the main reasons, for the loan being made in that currency is that the loan currency is expected to depreciate as against sterling during the loan period.
- (2) The “loan period”, in relation to a loan, is the period—
- (a) beginning at the time the loan is made, and
- (b) ending with the time by which, under the terms of the loan, the whole of the loan is to be repaid.
- 10 (1) Where this paragraph applies in relation to a loan—
- (a) paragraphs 7 and 8 do not apply in relation to the loan, and
- (b) sub-paragraphs (2) to (5) apply for the purposes of calculating the amount of the loan that is outstanding at the time P is treated as taking the relevant step.
- (2) The relevant principal amount, in relation to the loan, is an amount equal to the total of—
- (a) the value in sterling, at the reference date, of the initial principal amount lent, and
- (b) the value in sterling, at the reference date, of any sums that become principal under the loan, otherwise than by capitalisation of interest.

- (3) The “reference date”—
  - (a) in relation to an amount within sub-paragraph (2)(a), means the date on which the loan is made, and
  - (b) in relation to a sum within sub-paragraph (2)(b), means the date on which the sum becomes principal.
- (4) The repayment amount, in relation to the loan, is an amount equal to the total of—
  - (a) the amount of principal under the loan that has been repaid in sterling, and
  - (b) where payments are made, in a currency other than sterling, by way of repayment of principal under the loan, the amount equal to the sterling value of the payments.
- (5) The “sterling value” of a payment is its value in sterling on the date it is made.

*Meaning of “outstanding”: quasi-loans*

- 11 (1) An amount of a quasi-loan is outstanding for the purposes of paragraph 1 if the initial debt amount exceeds the repayment amount.
- (2) In sub-paragraph (1) “initial debt amount”, in relation to a quasi-loan, means the total of—
  - (a) an amount equal to the value of the acquired debt (see paragraph 2(2)), and
  - (b) where P subsequently acquires a further right (an “additional debt”) to a payment, or transfer of assets, in connection with the payment mentioned in paragraph 2(3)(a) or (as the case may be) the transfer mentioned in paragraph 2(3)(b), an amount equal to the value of the additional debt.
- (3) For the purposes of sub-paragraph (2)—
  - (a) where the acquired debt is a right to payment of an amount, the “value” of the debt is that amount,
  - (b) where the additional debt is a right to payment of an amount, the “value” of the debt is that amount, but is nil if the additional debt accrued to P by the capitalisation of interest on the acquired debt or another additional debt, and
  - (c) where the acquired debt or additional debt is a right to a transfer of assets, the “value” of the debt is an amount equal to—
    - (i) the market value of the assets at the time the right is acquired (or the value of the right at that time if the assets are non-fungible and not in existence at that time), or
    - (ii) if higher, the cost of the assets at that time.
- (4) In sub-paragraph (1) “repayment amount”, in relation to a quasi-loan, means the total of—
  - (a) the amount (if any) by which the initial debt amount has been reduced (by way of repayment) before 17 March 2016,
  - (b) payments in money (if any) made by the relevant person on or after 17 March 2016 by way of repayment of the initial debt amount, and
  - (c) if the acquired debt or an additional debt is a right to a transfer of assets, and the assets have been transferred, an amount equal to the market value of the assets at the time of the transfer.
- 12 (1) A payment or transfer is to be disregarded for the purposes of paragraph 11(4)(b) or (c) if—

- (a) there is any connection (direct or indirect) between the payment or transfer and a tax avoidance arrangement (other than the arrangement under which the quasi-loan was made), or
    - (b) the payment or the asset transferred, or a sum or asset directly or indirectly representing the payment or asset, is the subject of a relevant step (as defined in section 554A(2) of ITEPA 2003) that is taken—
      - (i) after the payment is made or the asset transferred, but
      - (ii) before the end of 5 April 2019.
  - (2) But a payment or transfer is not to be disregarded under sub-paragraph (1)(b) if, by the end of 5 April 2019, each relevant tax liability has been paid in full.
  - (3) For the purposes of this paragraph, each of the following is a “relevant tax liability”—
    - (a) any liability for income tax arising by virtue of the application of Chapter 2 by reason of the relevant step mentioned in sub-paragraph (1)(b), and
    - (b) where section 554Z6 of ITEPA 2003 (overlap with certain earnings) applies because that relevant step gives rise to relevant earnings for the purposes of that section, any liability for income tax in respect of those relevant earnings.
  - (4) Sub-paragraph (5) applies if a payment is disregarded under sub-paragraph (1)(b).
  - (5) The value of the relevant step treated as taken by paragraph 1 is not reduced under section 554Z5(3) of ITEPA 2003 (overlap with money or asset subject to earlier tax liability) by the amount of the sum, or the value of the asset, which is the subject of the relevant step mentioned in sub-paragraph (1)(b) unless the payment condition is met by reason of section 554Z5(4)(a) and (b)(ii) being met.
- 13 (1) This paragraph applies where—
- (a) a person (“P”) has made a quasi-loan to a relevant person,
  - (b) the quasi-loan was made on or after 6 April 1999, and
  - (c) before the end of 5 April 2019, A or B acquires (whether or not for consideration) a right to the payment or transfer of assets mentioned in paragraph 2(2)(a).
- (2) The amount equal to the value of the right acquired by A or B is to be treated—
- (a) for the purposes of paragraph 1(1) as an amount, of the quasi-loan made by P to the relevant person, that is outstanding immediately before the end of 5 April 2019;
  - (b) for the purposes of paragraph 1(4) and section 554Z3(1) of ITEPA 2003, as an amount of the quasi-loan that is outstanding at the time P is treated as taking the relevant step under paragraph 1(1).
- (3) For the purposes of sub-paragraph (2)—
- (a) where the right acquired by A or B is a right to payment of an amount, the “value” of the right is that amount;
  - (b) where the right acquired by A or B is a right to a transfer of assets, the “value” of the right is an amount equal to—
    - (i) the market value of the assets at the time the right is acquired (or the value of the right at that time if the assets are non-fungible and not in existence at that time), or
    - (ii) if higher, the cost of the assets at that time.

- (4) Where a loan or a quasi-loan made by P to a relevant person is replaced, directly or indirectly, by a quasi-loan or another quasi-loan (the “replacement quasi-loan”), references in sub-paragraphs (1) and (2) to the quasi-loan are references to the replacement quasi-loan.

*Meaning of “outstanding”: quasi-loans in currencies other than sterling*

- 14 (1) Paragraphs 15 to 18 apply where P makes a quasi-loan to a relevant person by reason of acquiring a right to a payment in a particular currency (the “quasi-loan currency”).
- (2) For the purposes of paragraphs 15 to 18, the value of an amount in a particular currency is to be determined by reference to an appropriate spot rate of exchange.
- 15 (1) This paragraph applies in relation to the quasi-loan if the quasi-loan currency is a currency other than sterling.
- (2) But this paragraph does not apply if paragraph 18 applies in relation to the quasi-loan.
- (3) The amount of the quasi-loan that is outstanding, at the time P is treated as taking the relevant step, is to be calculated in sterling as follows—
- Step 1*  
Calculate, in the quasi-loan currency, the amount that is outstanding at that time.
- Step 2*  
Take the value in sterling, at that time, of that amount.
- (4) See paragraph 16 for provision about repayments made in a currency other than the quasi-loan currency.

*Repayments in currencies other than the quasi-loan currency*

- 16 (1) This paragraph applies in relation to the quasi-loan if—
- (a) payments in money are made by way of repayment of the initial debt amount, and
- (b) some or all of the payments are made in a currency other than the quasi-loan currency.
- (2) But this paragraph does not apply if paragraph 18 applies in relation to the quasi-loan.
- (3) For the purposes of calculating the repayment amount in relation to the quasi-loan, the amount of each of the payments referred to in sub-paragraph (1)(b) is an amount equal to its value in the quasi-loan currency on the date it is made.

*Quasi-loans made in a depreciating currency*

- 17 (1) Paragraph 18 applies in relation to the quasi-loan if—
- (a) the quasi-loan currency is a currency other than sterling, and
- (b) it is reasonable to suppose that the main reason, or one of the main reasons, for the quasi-loan being made in that currency is that the quasi-loan currency is expected to depreciate during the quasi-loan period.
- (2) The “quasi-loan period”, in relation to a quasi-loan, is the period—
- (a) beginning at the time the quasi-loan is made, and



- (b) ending with the time by which, under the terms of the quasi-loan, the whole of the quasi-loan is to be repaid.
- 18 (1) Where this paragraph applies in relation to the quasi-loan—
  - (a) paragraphs 15 and 16 do not apply in relation to the quasi-loan, and
  - (b) sub-paragraphs (2) to (5) apply for the purposes of calculating the amount of the quasi-loan that is outstanding at the time P is treated as taking the relevant step.
- (2) The initial debt amount, in relation to the quasi-loan, is an amount equal to the total of—
  - (a) the value in sterling, at the reference date, of the acquired debt, and
  - (b) the value in sterling, at the reference date, of any additional debt.
- (3) The “reference date”—
  - (a) in relation to a right within sub-paragraph (2)(a), means the date on which P acquires it, and
  - (b) in relation to a right within sub-paragraph (2)(b), means the date on which P acquires it.
- (4) The repayment amount, in relation to the quasi-loan, is an amount equal to the total of—
  - (a) the amount of the initial debt amount that has been repaid in sterling, and
  - (b) where payments are made, in a currency other than sterling, by way of repayment of the initial debt amount, the amount equal to the sterling value of the payments.
- (5) The “sterling value” of a payment is its value in sterling on the date it is made.

*Meaning of “approved fixed term loan”*

- 19 (1) A loan is an “approved fixed term loan” on 5 April 2019 if, at any time on that day, it is a qualifying loan which has been approved by an officer of Revenue and Customs in accordance with paragraph 20.
- (2) A loan is a “qualifying loan” if—
  - (a) the loan was made before 9 December 2010,
  - (b) the term of the loan cannot exceed 10 years, and
  - (c) it is not an excluded loan under sub-paragraph (3).
- (3) A loan is an excluded loan if, at any time after the loan was made—
  - (a) the loan has been replaced, directly or indirectly, by another loan, or
  - (b) the terms of the loan have been altered so as—
    - (i) to meet the condition in sub-paragraph (2)(b), or
    - (ii) to postpone the date by which, under the terms of the loan, the whole of the loan must be repaid.



## PART 2

### APPROVAL OF A QUALIFYING LOAN ETC.

#### *Application to HMRC*

- 20 (1) The liable person in relation to a qualifying loan may make an application to the Commissioners for Her Majesty's Revenue and Customs for approval of the loan.
- (2) An officer of Revenue and Customs may grant such an application if satisfied that, in relation to the loan—
- (a) the qualifying payments condition is met (see paragraph 21), or
  - (b) the commercial terms condition is met (see paragraph 22).
- (3) Subject to sub-paragraph (4), an application may be made in 2018.
- (4) An application may be made after 2018 if an officer of Revenue and Customs considers it is reasonable in all the circumstances for the liable person to make a late application.
- (5) An application for an 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.
- (6) An officer of Revenue and Customs must notify the applicant of the decision on an application.
- (7) Where on an application under this paragraph a loan is approved, the approval may be revoked by an officer of Revenue and Customs if the officer considers that—
- (a) information provided in making the application contained an inaccuracy, and
  - (b) the inaccuracy was deliberate on the applicant's part.
- (8) Where approval is revoked under sub-paragraph (7), approval is to be treated as having been refused at the outset.
- (9) In this paragraph "liable person", in relation to a loan, means the person who is liable for any tax on the value of the relevant step in relation to the loan under paragraph 1.

#### *Qualifying payments condition*

- 21 (1) The qualifying payments condition is met in relation to a qualifying loan if, during the relevant period—
- (a) payments have been made to the lender in respect of the repayment of the principal of the loan, and
  - (b) the payments have been made at intervals not exceeding 53 weeks.
- (2) The "relevant period" in relation to a loan is the period beginning with the making of the loan and ending with the making of the application.

#### *Commercial terms condition*

- 22 (1) The commercial terms condition is met in relation to a qualifying loan if—
- (a) either—

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*Status: This is the original version (as it was originally enacted).*

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- (i) it is reasonable to assume that, had the qualifying loan been made in the ordinary course of a lending business, loans on terms comparable to those of the qualifying loan would have been available to members of the public, or
    - (ii) the qualifying loan was made in the ordinary course of a lending business, and
  - (b) the borrower has, in all material respects, complied with the terms of the loan.
- (2) For the purposes of sub-paragraph (1), a loan is made in the ordinary course of a lending business if it is made by a person in the ordinary course of a business carried on by the person which includes—
- (a) the lending of money, or
  - (b) the supplying of goods or services on credit.

### *Accelerated payments*

- 23 (1) Paragraph 24(1) applies where—
- (a) a person (“P”) would (ignoring paragraph 24) be treated as taking a relevant step within paragraph 1 by reason of making a loan, or a quasi-loan, to a relevant person,
  - (b) an accelerated payment notice, or a partner payment notice, relating to a relevant charge (the “accelerated payment notice”) has been given under Chapter 3 of Part 4 of FA 2014,
  - (c) the relevant person makes a payment (the “accelerated payment”) in respect of the understated or disputed tax to which the notice relates,
  - (d) the accelerated payment is made on or before the relevant date, and
  - (e) the amount of the loan or quasi-loan that, at the end of the relevant date, is outstanding for the purposes of paragraph 1 (see paragraphs 3 to 18) is equal to or less than the amount of the accelerated payment.
- (2) In sub-paragraph (1)(b), “relevant charge” means a charge to tax arising by reason of a step taken pursuant to the relevant arrangement concerned.
- (3) The reference in sub-paragraph (2) to the relevant arrangement concerned is a reference to the relevant arrangement in pursuance of which, or in connection with which, the loan or quasi-loan mentioned in sub-paragraph (1)(a) is made.
- (4) In sub-paragraph (1)(d) and (e), “the relevant date” means—
- (a) the approved repayment date, if P has made a loan which is an approved fixed term loan on 5 April 2019, or
  - (b) 5 April 2019, in any other case.
- (5) In sub-paragraphs (1)(c) and (2)—
- (a) the reference to tax includes a reference to relevant contributions, and
  - (b) the reference to a charge to tax includes a reference to a liability to pay relevant contributions;
- and for those purposes “relevant contributions” has the same meaning as in Schedule 2 to the National Insurance Contributions Act 2015 (application of Part 4 of FA 2014 to national insurance contributions).
- (6) If more than one notice relating to a particular relevant charge has been given—

- (a) the reference in sub-paragraph (1)(e) to the amount of the accelerated payment is to be treated as a reference to the aggregate of the amounts of each accelerated payment in respect of which the conditions in sub-paragraph (1)(c) and (d) are met, and
  - (b) the reference in paragraph 24(2) to the accelerated payment notice is to be treated as a reference to the accelerated payment notices or any of them.
- 24 (1) The relevant person may make an application to the Commissioners for Her Majesty's Revenue and Customs for P to be treated—
  - (a) as taking the relevant step only if the condition in sub-paragraph (2) is met, and
  - (b) as doing so not at the time given by paragraph 1(2) but immediately before—
    - (i) the end of the 30 days beginning with the date on which the condition in sub-paragraph (2) becomes met, or
    - (ii) if later, the end of 5 April 2019.
- (2) The condition is that, on the withdrawal of the accelerated payment notice or on the determination of an appeal, any part of the accelerated payment is repaid.
- (3) Subject to sub-paragraph (4), an application under sub-paragraph (1) may be made in 2018.
- (4) An application may be made after 2018 if an officer of Revenue and Customs considers it is reasonable in all the circumstances for the relevant person to make a late application.
- (5) An application 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.
- (6) An officer of Revenue and Customs must notify the applicant of the decision on an application under this paragraph.
- (7) A favourable decision on an application under this paragraph may be revoked by an officer of Revenue and Customs if the officer considers that—
  - (a) information provided in making the application contained an inaccuracy, and
  - (b) the inaccuracy was deliberate on the applicant's part.
- (8) Where the decision on an application is revoked under sub-paragraph (7), the application is to be treated as having been refused at the outset.

### PART 3

#### EXCLUSIONS

##### *Commercial transactions*

- 25 Chapter 2 of Part 7A of ITEPA 2003 does not apply by reason of a relevant step within paragraph 1 which is treated as being taken by a person ("P") if—
  - (a) P is treated as taking a relevant step by that paragraph by reason of the payment of a sum of money by way of a loan,

- (b) the loan is (at the time it is made) a loan on ordinary commercial terms within the meaning of section 176 of ITEPA 2003, ignoring conditions B and C in that section, and
- (c) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.

26 In section 554F of ITEPA 2003 (exclusions: commercial transactions), at the end insert—

“(6) See paragraph 25 of Schedule 11 to F(No. 2)A 2017 for provision about exclusions where a loan is made on ordinary commercial terms and the relevant step is within paragraph 1 of that Schedule.”

*Transfer of employment-related loans*

27 (1) Chapter 2 of Part 7A of ITEPA 2003 does not apply by reason of a relevant step within paragraph 1 which is treated as being taken by a person (“P”) if—

- (a) P is treated as taking a relevant step within that paragraph by reason of making a quasi-loan by 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 right is acquired, the section 180 threshold is not exceeded in relation to the loan,
- (d) at the time the right is acquired, the borrower is an employee, or a prospective employee, of P, and
- (e) there is no connection (direct or indirect) between the acquisition of the right and a tax avoidance arrangement.

(2) Subsections (2) to (5) of section 554OA of ITEPA 2003 (section 180 threshold) apply for the purposes of this paragraph as they apply for the purposes of that section.

(3) In this paragraph, “employment-related loan” has the same meaning as it has for the purposes of Chapter 7 of Part 3.

28 In section 554OA of ITEPA 2003 (exclusions: transfer of employment-related loans), at the end insert—

“(6) See paragraph 27 of Schedule 11 to F(No. 2)A 2017 for provision about exclusions where a loan is an employment-related loan and the relevant step is within paragraph 1 of that Schedule.”

*Transactions under employee benefit packages*

29 (1) Chapter 2 of Part 7A of ITEPA 2003 does not apply by reason of a relevant step within paragraph 1 which is treated as being taken by a person (“P”) if—

- (a) P is treated as taking a relevant step by that paragraph by reason of the payment of a sum of money by way of a loan,
- (b) the step is not taken under a pension scheme,
- (c) the loan was made for the sole purpose of a transaction of P’s with A and which P entered into in the ordinary course of P’s business,
- (d) at the time the loan was made (the “relevant time”)—

- (i) a substantial proportion of P's business involved making similar loans to members of the public,
    - (ii) the transaction with A was part of a package of benefits which was available to a substantial proportion of B's employees, and
    - (iii) sub-paragraph (3) does not apply,
  - (e) the terms on which similar transactions were offered by P under the package of benefits mentioned in paragraph (d)(ii) were generous enough to enable substantially all of the employees of B to whom the package was available at or around the relevant time to take advantage of what was offered (if they wanted to),
  - (f) the terms on which P entered into the transaction with A were substantially the same as the terms on which at or around the relevant time P normally entered into similar transactions with employees of B under the package of benefits,
  - (g) if B is a company, a majority of B's employees to whom the package of benefits was available at the relevant time did not have a material interest (as defined in section 68 of ITEPA 2003) in B, and
  - (h) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (2) For the purposes of sub-paragraph (1)(d)(i)—
- (a) a loan is "similar" if it is made for the same or similar purposes as the loan which is the subject of the relevant step, and
  - (b) "members of the public" means members of the public at large with whom P deals at arm's length.
- (3) This sub-paragraph applies if any feature of the package of benefits mentioned in sub-paragraph (1)(d)(ii) had or would have been likely to have had the effect that, of the employees of B to whom the package was available, it is employees within sub-paragraph (4) on whom benefits under the package will be wholly or mainly conferred.
- (4) The employees within this sub-paragraph are—
- (a) directors,
  - (b) senior employees,
  - (c) employees who at the relevant time received, or as a result of the package of benefits would have been likely to have received, the higher or highest levels of remuneration, and
  - (d) if, at the relevant time, B was a company and was a member of a group of companies, any employees not within paragraph (b) or (c) who—
    - (i) were senior employees in the group, or
    - (ii) received, or as a result of the package of benefits would have been likely to have received, the higher or highest levels of remuneration in the group.
- (5) For the purposes of sub-paragraph (1)(d) and (e) a transaction is "similar" if it is of the same or a similar type to the transaction which P has or had with A.
- (6) In this paragraph references to A include references to any person linked with A.
- (7) In this paragraph "pension scheme" has the same meaning as in Part 4 of FA 2004 (see section 150(1) of that Act).

- 30 In section 554G of ITEPA 2003 (exclusions: transactions under employee benefit packages), at the end insert—

“(8) See paragraph 29 of Schedule 11 to F(No. 2)A 2017 for provision about exclusions for transactions under employee benefit packages in a case in which the relevant step is within paragraph 1 of that Schedule.”

*Cases involving employment-related securities*

- 31 Chapter 2 of Part 7A of ITEPA 2003 does not apply by reason of a relevant step within paragraph 1 which is treated as being taken by a person (“P”) if—

- (a) P is treated as taking a relevant step by that paragraph by reason of the payment of a sum of money by way of a loan (the “relevant loan”),
- (b) the relevant loan is made and used solely for the purpose of enabling A to exercise an employment-related securities option (within the meaning of Chapter 5 of Part 7 of ITEPA 2003),
- (c) the exercise of the option by A gives rise to employment income of A in respect of A’s employment with B—
  - (i) which is chargeable to income tax or would be chargeable apart from Chapter 5B of Part 2 of ITEPA 2003, or
  - (ii) which is exempt income, and
- (d) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.

- 32 In section 554N of ITEPA 2003 (exclusions: other cases involving employment-related securities etc.), at the end insert—

“(17) See paragraph 31 of Schedule 11 to F(No. 2)A 2017 for provision about exclusions where a loan is made for the purpose of enabling the exercise of an employment-related securities option and the relevant step is within paragraph 1 of that Schedule.”

*Employee car ownership schemes*

- 33 (1) This paragraph applies if—

- (a) there is an arrangement (“the car ownership arrangement”) which—
  - (i) provides for A to purchase a new car from another person (“S”) using a loan (“the car loan”) to be made to A by an authorised lender,
  - (ii) specifies the date (“the repayment date”) by which the car loan must be fully repaid which must be no later than four years after the date on which the car loan is made, and
  - (iii) permits A, in order to obtain funds to repay the car loan, to sell the car back to S on a specified date at a specified price based on an estimate (made at the time the car ownership arrangement is made) of the likely outstanding amount of the car loan on the specified date, and
  - (iv) as provided for by the car ownership arrangement, A purchases the car using the car loan.

- (2) Chapter 2 does not apply by reason of a relevant step within paragraph 1 which is treated as being taken by a person if—

- (a) the person is treated as taking a relevant step by that paragraph by reason of making the car loan, and
- (b) the car ownership arrangement is not a tax avoidance arrangement and there is no other connection (direct or indirect) between the relevant step and a tax avoidance arrangement.

(3) In this paragraph—

“car” has the meaning given by section 235(2) of ITEPA 2003, and  
 “authorised lender” means a person who—

- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to enter into, or to exercise or have the right to exercise rights and duties under, a contract of the kind mentioned in paragraph 23 of Schedule 2 to that Act, and
- (b) is not acting as a trustee.

(4) The definition of “authorised lender” must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act.

34 In section 554O of ITEPA 2003 (exclusions: employee car ownership schemes), at the end insert—

“(7) See paragraph 33 of Schedule 11 to F(No. 2)A 2017 for provision about exclusions for car loans in a case in which the relevant step is within paragraph 1 of that Schedule.”

#### *Acquisition of unlisted employer shares*

35 (1) Chapter 2 of Part 7A of ITEPA 2003 does not apply by reason of a relevant step within paragraph 1 which is treated as being taken by a person (“P”) if the conditions in sub-paragraph (2) are met.

(2) The conditions are that—

- (a) the loan or quasi-loan concerned was made before 9 December 2010,
- (b) if P is treated as taking a relevant step by paragraph 1 by reason of the payment of a sum of money by way of loan, the sum is used by A solely to acquire employer shares,
- (c) if P is treated as taking a relevant step by paragraph 1 by reason of making a quasi-loan, the transfer of assets mentioned in paragraph 2(3)(b) is the transfer of employer shares to A,
- (d) the employer shares are acquired, or transferred, before the end of the period of one year beginning with the day on which the loan, or quasi-loan, is made, and
- (e) the employer shares are not listed on a recognised stock exchange at any time during the period beginning with the day on which the loan, or quasi-loan, is made and ending with the earlier of—
  - (i) the day on which A ceases to hold the shares, or
  - (ii) the day on which the loan, or quasi-loan, is repaid.

(3) In this paragraph “employer shares” means shares that form part of the ordinary share capital of—



- (a) B, or
  - (b) if B is a company and is a member of a group of companies at the time the shares are acquired, any other company which is a member of that group at that time.
- (4) Sub-paragraph (6) applies if—
- (a) apart from sub-paragraph (1), Chapter 2 of Part 7A would apply by reason of the relevant step mentioned in sub-paragraph (1), and
  - (b) at the end of the relevant period, an amount of the loan, or quasi-loan, is outstanding.
- (5) In this paragraph “the relevant period” means the period of 12 months beginning with the day on which A ceases to hold the shares.
- (6) Part 7A of ITEPA 2003 has effect as if—
- (a) a relevant step within paragraph 1 were taken by reason of making a loan, or quasi-loan, of an amount equal to the amount of the loan, or quasi-loan, outstanding at the end of the relevant period, and
  - (b) the relevant step were taken on the day after the end of the relevant period.

## PART 4

### SUPPLEMENTARY PROVISION

#### *Duty to provide loan balance information to B*

- 36 (1) This paragraph applies where—
- (a) a person (“P”) has made a loan, or a quasi-loan, to a relevant person,
  - (b) the loan or quasi-loan was made on or after 6 April 1999, and
  - (c) an amount of the loan or quasi-loan is outstanding at any time—
    - (i) on or after 17 March 2016, and
    - (ii) before the end of 5 April 2019.
- (2) Each of A and P must ensure that the loan balance information in relation to the loan or quasi-loan is provided to B before the end of the period of 10 days beginning with the day after the loan charge date.
- (3) The “loan balance information” is—
- (a) the information that is necessary for B to ascertain the amount of the loan or quasi-loan concerned that is outstanding immediately before the end of the loan charge date, and
  - (b) such other information about the loan or quasi-loan as B may reasonably require for the purpose of compliance with B’s obligations under PAYE regulations.
- (4) In this paragraph “loan charge date” means—
- (a) the approved repayment date, if the loan is an approved fixed term loan on 5 April 2019, or
  - (b) 5 April 2019, in any other case.

- (5) If, despite taking reasonable steps, A and P have failed to contact B to provide the loan balance information, each of them is responsible for ensuring that the Commissioners for Her Majesty's Revenue and Customs are notified of that fact.
- (6) A notification under sub-paragraph (5) 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) "Loan", "quasi-loan" and "outstanding" have the same meaning for the purposes of this paragraph as they have for the purposes of paragraph 1.

*Double taxation*

- 37 (1) Sub-paragraph (2) applies where—
- (a) P is treated as taking a relevant step by paragraph 1 by reason of a loan made to a relevant person, and
  - (b) the loan is an employment-related loan (within the meaning of Chapter 7 of Part 3 of ITEPA 2003).
- (2) The effect of section 554Z2(2)(a) of ITEPA 2003 (value of relevant step to count as employment income: application of Part 7A instead of the benefits code) is that the loan is not be treated as a taxable cheap loan for the purposes of Chapter 7 of Part 3 of that Act for—
- (a) the tax year in which the relevant step is treated as being taken, and
  - (b) any subsequent tax year.
- 38 In section 554Z2 of ITEPA 2003, at the end insert—
- “(4) See paragraph 37 of Schedule 11 to F(No. 2)A 2017 for provision about the effect of subsection (2)(a) in a case in which the relevant step is within paragraph 1 of that Schedule.”

*Remittance basis*

- 39 Part 7A of ITEPA 2003 is amended as follows.
- 40 (1) Section 554Z9 (remittance basis: A does not meet section 26A requirement) is amended in accordance with this paragraph.
- (2) In subsection (1), for “Subsection (2) applies” substitute “Subsections (2) and (2A) apply”.
  - (3) In subsection (1A), for “subsection (2) does not apply” substitute “subsections (2) and (2A) do not apply”.
  - (4) At the beginning of subsection (2) insert “Except in a case within subsection (2A),”.
  - (5) After subsection (2) insert—
- “(2A) Where the relevant step is within paragraph 1 of Schedule 11 to F(No. 2)A 2017, A's employment income by virtue of section 554Z2(1), or the relevant part of it, is “taxable specific income” in the tax year in which the relevant step is treated as being taken so far as the income is remitted to the United Kingdom in that tax year or in any previous tax year.”

- (6) In subsection (3) for “this purpose” substitute “the purposes of subsections (2) and (2A)”.
- (7) In subsection (5)—
  - (a) in the words before paragraph (a), for “subsection (2)” substitute “subsection (2) or (2A)”;
  - (b) in the words after paragraph (d)—
    - (i) for “subsection (2)” substitute “subsection (2) or (2A)”;
    - (ii) for “that subsection” substitute “subsection (2) or (2A) (as the case may be)”.
- 41 (1) Section 554Z10 (remittance basis: A meets section 26A requirement) is amended in accordance with this paragraph.
- (2) In subsection (1) for “Subsection (2) applies” substitute “Subsections (2) and (2A) apply”.
- (3) At the beginning of subsection (2) insert “Except in a case within subsection (2AA),”.
- (4) After subsection (2) insert—
 

“(2AA) Where the relevant step is within paragraph 1 of Schedule 11 to F(No. 2)A 2017, the overseas portion of (as the case may be)—

  - (a) A’s employment income by virtue of section 554Z2(1), or
  - (b) the relevant part of A’s employment income by virtue of that section, is “taxable specific income” in the tax year in which the relevant step is treated as being taken so far as the overseas portion is remitted to the United Kingdom in that tax year or in any previous tax year.”
- 42 (1) Section 554Z11 (remittance basis: supplementary) is amended in accordance with this paragraph.
- (2) In subsection (4), for “554Z9(2) or 554Z10(2)” substitute “554Z9(2) or (2A) or 554Z10(2) or (2AA)”.
- (3) In subsection (5), for “554Z9(2) or 554Z10(2)” substitute “554Z9(2) or (2A) or 554Z10(2) or (2AA)”.
- (4) In subsection (6), for “554Z9(2) or 554Z10(2)” substitute “554Z9(2) or (2A) or 554Z10(2) or (2AA)”.
- 43 (1) Section 554Z11A (temporary non-residents) is amended in accordance with this paragraph.
- (2) In subsection (2)—
  - (a) after “554Z9(2)” insert “or (2A)”;
  - (b) after “554Z10(2)” insert “or (2AA)”.
- (3) In subsection (3)(d)(i), for “554Z9(2) or 554Z10(2)” substitute “554Z9(2) or (2A) or 554Z10(2) or (2AA)”.

### *Interpretation*

- 44 (1) In this Schedule, “tax avoidance arrangement” has the same meaning as it has for the purposes of Part 7A of ITEPA 2003 (see section 554Z(13) to (15) of that Act).

- (2) Section 554Z(16) (determining whether a step is connected with a tax avoidance arrangement) applies for the purposes of this Schedule as it applies for the purposes of Part 7A of ITEPA 2003.

45 See section 554A(1)(a) of ITEPA 2003 for the meaning of “A” and “B”.

## PART 5

### CONSEQUENTIAL AMENDMENTS

#### *ITEPA 2003*

- 46 (1) ITEPA 2003 is amended in accordance with this paragraph.
- (2) In section 554A(2) (meaning of “relevant step”), after “or 554D” insert “, or paragraph 1 of Schedule 11 to F(No. 2)A 2017”.
- (3) In section 554A(4) (relevant step taken on or after A’s death), in paragraph (a) after “section 554B taken” insert “, or a relevant step within paragraph 1 of Schedule 11 to F(No.2)A 2017 which is treated as being taken,”.
- (4) In section 554Z(9) (interpretation: reference to definition of “relevant step”), at the end insert “, but see also Schedule 11 to F(No. 2)A 2017”.
- (5) In section 554Z(10) (interpretation: relevant step which involves a sum of money) omit “or” at the end of paragraph (b) and after paragraph (c) insert “, or  
(d) a step within paragraph 1 of Schedule 11 to F(No. 2)A 2017.”
- (6) In section 554Z5 of ITEPA 2003 (overlap with money or asset subject to earlier tax liability), at the end insert—
- “(12) See paragraphs 4(5) and (6) and 12(4) and (5) of Schedule 11 of F(No. 2)A 2017) for provision about the effect of subsection (3) in certain cases where the relevant step is within paragraph 1 of that Schedule.”

#### *FA 2011*

- 47 In paragraph 59 of Schedule 2 to FA 2011 (transitional provision relating to Part 7A of ITEPA 2003), in sub-paragraph (1)(a), after “ITEPA 2003” insert “or paragraph 1 of Schedule 11 to F(No. 2)A 2017”.