



# Finance Act 2020

## 2020 CHAPTER 14

### PART 1

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *Loan charge*

#### **15 Loan charge not to apply to loans or quasi-loans made before 9 December 2010**

- (1) In Schedule 11 to F(No.2)A 2017 (employment income provided through third parties: loans etc outstanding on 5 April 2019) in paragraph 1 (person to be treated as taking a relevant step for the purposes of Part 7A of ITEPA 2003 by reason of making a loan or quasi-loan) in sub-paragraph (1)(b) for “6 April 1999” substitute “9 December 2010”.
- (2) In Schedule 12 to F(No.2)A 2017 (trading income provided through third parties: loans etc outstanding on 5 April 2019) in paragraph 1 (application of sections 23A to 23H of ITTOIA 2005 in relation to certain loans and quasi-loans) in sub-paragraph (2)(a) (i) for “6 April 1999” substitute “9 December 2010”.
- (3) Part 1 of Schedule 2 makes further amendments to F(No.2)A 2017 in consequence of this section.

#### **16 Election for loan charge to be split over three tax years**

- (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) In paragraph 1 (person to be treated as taking a relevant step for the purposes of Part 7A of ITEPA 2003 by reason of making loan or quasi-loan)—
  - (a) after sub-paragraph (6) insert—

“(6A) Sub-paragraph (4) is subject to paragraph 1A(5).”, and
  - (b) in sub-paragraph (7)—

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- (i) in the words before paragraph (a) after “paragraph” insert “ and paragraph 1A ”, and
- (ii) in paragraph (a) for “the following provisions of this Schedule” substitute “ paragraphs 3 to 18 ”.

(3) After paragraph 1 insert—

- “1A
- (1) This paragraph applies where—
    - (a) a person (“P”) is treated as taking a relevant step within paragraph 1 (“the initial step”) by reason of making a loan or quasi-loan, and
    - (b) an election has been made by A for the purposes of this paragraph.
  - (2) P is treated as taking two further relevant steps for the purposes of Part 7A of ITEPA 2003.
  - (3) P is treated as taking one of the further steps on the first anniversary of the date on which P is treated as taking the initial step.
  - (4) P is treated as taking one of the further steps on the second anniversary of the date on which P is treated as taking the initial step.
  - (5) For the purposes of section 554Z3(1) of ITEPA 2003 (value of relevant step), the initial step and each of the further steps is to be treated as involving a sum of money equal to one third of the amount of the loan or quasi-loan that is outstanding at the time P is treated as taking the initial step.
  - (6) References in this Schedule and in Part 7A of ITEPA 2003 to a relevant step within paragraph 1A of this Schedule are to be read as references to a relevant step which a person is treated by this paragraph as taking.
  - (7) An election for the purposes of this paragraph—
    - (a) may be made at any time before 1 October 2020, and
    - (b) may be made at a later time if an officer of Revenue and Customs allows it.
  - (8) But a person who is under a duty imposed by paragraph 35C of this Schedule or paragraph 22 of Schedule 12 may not make an election for the purposes of this paragraph until that duty has been complied with.
  - (9) An election for the purposes of this paragraph may not be revoked.
  - (10) A person who has made an election for the purposes of paragraph 1(3A) of Schedule 12 is to be treated as having made an election for the purposes of this paragraph.
  - (11) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that sub-paragraph (7)(a) applies to a specified class of persons as if the reference to 1 October 2020 were to such later date as is specified.
  - (12) In sub-paragraph (11) “specified” means specified in the regulations.”
- (4) Schedule 12 to F(No.2)A 2017 (trading income provided through third parties: loans etc outstanding on 5 April 2019) is amended as follows.

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- (5) In paragraph 1 (application of sections 23A to 23H of ITTOIA 2005 in relation to certain loans and quasi-loans)—
- (a) in sub-paragraph (1) for the words from “as a” to the end substitute “ for the purposes of sections 23A to 23H of ITTOIA 2005 as a relevant benefit that arises immediately before the end of 5 April 2019. ”,
  - (b) in sub-paragraph (3)—
    - (i) in the words before paragraph (a), after “applies” insert “ and T has not made an election for the purposes of sub-paragraph (3A) ”,
    - (ii) in paragraph (a) for the words from “immediately” to the end substitute “ at the time the relevant benefit is treated as arising, and ”, and
    - (iii) for paragraphs (b) and (c) substitute—
      - “(b) where T ceases to carry on the relevant trade before the tax year in which the relevant benefit is treated as arising, as if section 23E(1)(b) were omitted and as if section 23E(1) provided that the relevant benefit amount is treated for income tax purposes as a post-cessation receipt of the trade received in that tax year.”, and
  - (c) after sub-paragraph (3) insert—
    - “(3A) Where section 23E of ITTOIA 2005 applies in relation to a relevant benefit which is a loan or quasi-loan in relation to which sub-paragraph (2) applies and T has made an election for the purposes of this sub-paragraph, section 23E has effect—
      - (a) as if the “relevant benefit amount” were one third of the amount of the loan or quasi-loan that is outstanding at the time the relevant benefit is treated as arising,
      - (b) as if section 23E(1)(a) specified the tax year in which the relevant benefit is treated as arising and each of the two subsequent tax years, and
      - (c) where T ceases to carry on the relevant trade before any tax year so specified in section 23E(1)(a), as if section 23E(1)(b) were omitted and as if section 23E(1) provided that the relevant benefit amount is to be treated for income tax purposes as a post-cessation receipt of the trade received in that tax year.
    - (3B) An election for the purposes of sub-paragraph (3A)—
      - (a) may be made at any time before 1 October 2020, and
      - (b) may be made at a later time if an officer of Revenue and Customs allows it.
    - (3C) But a person who is under a duty imposed by paragraph 22 of this Schedule or paragraph 35C of Schedule 11 may not make an election for the purposes of sub-paragraph (3A) until that duty has been complied with.
    - (3D) An election for the purposes of sub-paragraph (3A) may not be revoked.

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- (3E) A person who has made an election for the purposes of paragraph 1A of Schedule 11 is to be treated as having made an election for the purposes of sub-paragraph (3A) of this paragraph.
  - (3F) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that sub-paragraph (3B)(a) applies to a specified class of persons as if the reference to 1 October 2020 were to such later date as is specified.
  - (3G) In sub-paragraph (3F) “specified” means specified in the regulations.”
- (6) Part 2 of Schedule 2 makes amendments in consequence of this section.

## 17 **Loan charge reduced where underlying liability disclosed but unenforceable**

- (1) In Schedule 11 to F(No.2)A 2017 (employment income provided through third parties: loans etc outstanding on 5 April 2019) after paragraph 1A (as inserted by section 16) insert—

“1B (1) This paragraph applies where—

- (a) a person is treated as taking a relevant step within paragraph 1 by reason of making a loan or quasi-loan,
- (b) a reasonable case could have been made that for a qualifying tax year (“the relevant year”) A was chargeable to income tax on an amount that was referable to the loan or quasi-loan,
- (c) at a time when an officer of Revenue and Customs had power to recover (from A or any other person) income tax for the relevant year in respect of that amount, a qualifying tax return or two or more qualifying tax returns of the same type taken together contained a reasonable disclosure of the loan or quasi-loan, and
- (d) as at 6 April 2019 an officer of Revenue and Customs had not taken steps to recover (from A or any other person) income tax for the relevant year in respect of that amount.

(2) But this paragraph does not apply if—

- (a) a reasonable case could have been made that for a tax year other than the relevant year (“the alternative year”) A was chargeable to income tax on an amount within sub-paragraph (3), and
- (b) it is the case that—
  - (i) on or before 5 April 2019 an officer of Revenue and Customs took steps to recover (from A or any other person) income tax for the alternative year in respect of that amount, or
  - (ii) the alternative year is not a qualifying tax year.

(3) An amount is within this sub-paragraph if —

- (a) it is the same amount as is mentioned in sub-paragraph (1),
- (b) it is part of the amount mentioned in sub-paragraph (1), or
- (c) it is derived from or represents the whole or part of the amount mentioned in sub-paragraph (1).

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- (4) Where this paragraph applies, then for the purposes of paragraphs 1(4) and 1A(5) the amount of the loan or quasi-loan that is outstanding is to be taken to be reduced (but not below nil) by the amount mentioned in sub-paragraph (1).
- (5) For the purposes of sub-paragraph (1)(c) a qualifying tax return, or two or more qualifying tax returns taken together, contained a reasonable disclosure of the loan or quasi-loan if the return or returns taken together—
- (a) identified the loan or quasi-loan,
  - (b) identified the person to whom the loan or quasi-loan was made in a case where the loan or quasi-loan was made to a person other than A,
  - (c) identified the relevant arrangements in pursuance of which or in connection with which the loan or quasi-loan was made, and
  - (d) provided such other information as was sufficient for it to be apparent that a reasonable case could be made that for the relevant year A was chargeable to income tax on an amount that was referable to the loan or quasi-loan.
- (6) A reference in sub-paragraph (1)(b), (2) or (5)(d) to A being chargeable to income tax does not include A being chargeable to income tax by reason of section 175 of ITEPA 2003 (benefit of taxable cheap loan treated as earnings).
- (7) In this paragraph—
- “qualifying tax year” means the tax year 2015-16 and any earlier tax year, and
  - “qualifying tax return” means —
- (a) a return made by A or B under section 8 of TMA 1970 for a qualifying tax year, and any accompanying accounts, statements or documents, or
  - (b) a return made by B under paragraph 3 of Schedule 18 to FA 1998 for an accounting period that commenced before 6 April 2016,
- and a qualifying tax return is of the same type as another if both fall within the same paragraph of this definition.”
- (2) In Schedule 12 to F(No.2)A 2017 (trading income provided through third parties: loans etc outstanding on 5 April 2019) after paragraph 1 insert—
- “1A (1) This paragraph applies where—
- (a) a loan or quasi-loan is to be treated for the purposes of sections 23A to 23H of ITTOIA 2005 as a relevant benefit by reason of paragraph 1,
  - (b) a reasonable case could have been made that for a qualifying tax year (“the relevant year”) T was chargeable to income tax on an amount that was referable to the loan or quasi-loan,
  - (c) at a time when an officer of Revenue and Customs had power to recover (from T or any other person) income tax for the relevant

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- year in respect of that amount, a qualifying tax return or two or more qualifying tax returns taken together contained a reasonable disclosure of the loan or quasi-loan, and
- (d) as at 6 April 2019 an officer of Revenue and Customs had not taken steps to recover (from T or any other person) income tax for the relevant year in respect of that amount.
- (2) But this paragraph does not apply if—
- (a) a reasonable case could have been made that for a tax year other than the relevant year (“the alternative year”) T was chargeable to income tax on an amount within sub-paragraph (3), and
- (b) it is the case that—
- (i) on or before 5 April 2019 an officer of Revenue and Customs took steps to recover (from T or any other person) income tax for the alternative year in respect of that amount, or
- (ii) the alternative year is not a qualifying tax year.
- (3) An amount is within this sub-paragraph if—
- (a) it is the same amount as is mentioned in sub-paragraph (1),
- (b) it is part of the amount mentioned in sub-paragraph (1), or
- (c) it is derived from or represents the whole or part of the amount mentioned in sub-paragraph (1).
- (4) Where this paragraph applies, then for the purposes of paragraph 1(3)(a) and (3A)(a) the amount of the loan or quasi-loan that is outstanding is to be taken to be reduced (but not below nil) by the amount mentioned in sub-paragraph (1).
- (5) For the purposes of sub-paragraph (1)(c) a qualifying tax return, or two or more qualifying tax returns taken together, contained a reasonable disclosure of the loan or quasi-loan if the return or returns taken together—
- (a) identified the loan or quasi-loan,
- (b) identified the person to whom the loan or quasi-loan was made in a case where the loan or quasi-loan was made to a person other than T,
- (c) identified the relevant arrangements in pursuance of which or in connection with which the loan or quasi-loan was made, and
- (d) provided such other information as was sufficient for it to be apparent that a reasonable case could be made that for the relevant year T was chargeable to income tax on an amount that was referable to the loan or quasi-loan.
- (6) In this paragraph—
- “qualifying tax year” means the tax year 2015-16 and any earlier tax year, and
- “qualifying tax return” means a return made by T under section 8 of TMA 1970 for a qualifying tax year, and any accompanying accounts, statements or documents.”

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## **18 Relief from interest on tax payable by a person subject to the loan charge**

- (1) This section applies where—
  - (a) a person is chargeable to income tax on any amount by reason of Schedule 11 or 12 to F(No.2)A 2017 or would be so chargeable but for section 15 or 17 of this Act,
  - (b) before the end of September 2020 the person delivers a return under section 8 of TMA 1970 for the tax year 2018-19, and
  - (c) at the end of September 2020 the person's self-assessment included in that return is complete and accurate.
- (2) If before the end of September 2020 the person discharges their liability to income tax and capital gains tax for the tax year 2018-19—
  - (a) any amount paid in discharging that liability (other than a payment made on account of income tax for that tax year) is to be taken to not carry interest, and
  - (b) any amount paid by the person on account of their liability to income tax for the tax year 2019-20 is to be taken to not carry interest.
- (3) If before the end of September 2020 the person enters into an agreement with the Commissioners for Her Majesty's Revenue and Customs as to the discharge of their liability to income tax and capital gains tax for the tax year 2018-19—
  - (a) any amount paid before the end of September 2020 in discharging that liability (other than a payment made on account of income tax for that tax year) is to be taken to not carry interest,
  - (b) for the purposes of section 101 of FA 2009 the late payment interest start date in respect of any amount paid in accordance with the agreement after the end of September 2020 is 1 October 2020, and
  - (c) any amount paid by the person on account of their liability to income tax for the tax year 2019-20 is to be taken to not carry interest.
- (4) Paragraph (b) of subsection (2) and paragraph (c) of subsection (3) do not apply if at the end of January 2021 the person has neither discharged their liability to income tax and capital gains tax for the tax year 2019-20 nor entered into an agreement with the Commissioners for Her Majesty's Revenue and Customs as to the discharge of that liability.
- (5) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that this section applies to a specified class of persons as if—
  - (a) the references in this section to the end of September 2020 were to such later time as is specified, and
  - (b) the reference in subsection (3)(b) to 1 October 2020 were to such later date as is specified.
- (6) In subsection (5) “specified” means specified in the regulations.

## **19 Minor amendments relating to the loan charge**

- (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) In paragraph 35C(2)(b) (date by which loan charge information must be provided) for “1 October 2019” substitute “1 October 2020”.

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- (3) In paragraph 45 (meaning of “A” and “B”) after “section 554A(1)(a)” insert “ and 554AA(1)(a) ”.
- (4) In Schedule 12 to F(No.2)A 2017 (trading income provided through third parties: loans etc outstanding on 5 April 2019) in paragraph 22(2)(b) (date by which loan charge information must be provided) for “1 October 2019” substitute “ 1 October 2020 ”.

## **20 Repaying sums paid to HMRC under agreements relating to certain loans etc**

- (1) The Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) must establish a scheme under which they may on an application made to them before 1 October 2021—
  - (a) repay the whole or part of a qualifying amount paid or treated as paid to them under a qualifying agreement, or
  - (b) waive the payment of the whole or part of a qualifying amount due to be paid to them under a qualifying agreement.
- (2) An agreement is a qualifying agreement if—
  - (a) it is an agreement with the Commissioners,
  - (b) it is made on or after 16 March 2016 and before 11 March 2020, and
  - (c) it imposes an obligation on any party to the agreement to pay an amount of income tax that is referable (directly or indirectly) to a qualifying loan or quasi-loan.
- (3) An amount paid, treated as paid or due to be paid under a qualifying agreement is a qualifying amount if—
  - (a) the amount is referable (directly or indirectly) to a qualifying loan or quasi-loan, and
  - (b) the amount is one that an officer of Revenue and Customs had no power to recover at the time the agreement was made.
- (4) But an amount that is referable (directly or indirectly) to a qualifying loan or quasi-loan made on or after 9 December 2010 is not a qualifying amount by reason of subsection (3) unless at a time when an officer of Revenue and Customs had power to recover the amount a tax return, or two or more tax returns of the same type taken together, contained a reasonable disclosure of the loan or quasi-loan.
- (5) For the purposes of subsection (4), a tax return, or two or more tax returns taken together, contained a reasonable disclosure of the loan or quasi-loan if the return or returns taken together—
  - (a) identified the qualifying loan or quasi-loan,
  - (b) identified the person to whom the qualifying loan or quasi-loan was made,
  - (c) identified any arrangements in pursuance of which, or in connection with which, the qualifying loan or quasi-loan was made, and
  - (d) provided such other information as was sufficient for it to be apparent that a reasonable case could have been made that the amount concerned was payable to the Commissioners.
- (6) An amount paid, treated as paid or due to be paid under a qualifying agreement is also a qualifying amount if it is interest on another qualifying amount paid, treated as paid or due to be paid under that agreement.



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- (7) A loan or quasi-loan is a qualifying loan or quasi-loan if it is made on or after 6 April 1999 and before 6 April 2016.
- (8) In this section—
- “loan” and “quasi-loan” have the meaning they have in Part 1 of Schedule 11 to F(No.2)A 2017 and Schedule 12 to that Act (see paragraph 2 of each of those Schedules), and
- “tax return” means—
- (a) a return made under section 8 of TMA 1970 and any accompanying accounts, statements or documents, or
- (b) a return made under paragraph 3 of Schedule 18 to FA 1998,
- and a tax return is of the same type as another if both fall within the same paragraph of this definition.
- (9) Section 21 makes further provision in connection with the scheme established under this section.

## **21 Operation of the scheme**

- (1) The scheme may make provision—
- (a) in relation to all qualifying agreements or specified descriptions of qualifying agreements only, and
- (b) in relation to all qualifying amounts or specified descriptions of qualifying amounts only.
- (2) The scheme may make provision for an amount that is not a qualifying amount by reason only of subsection (4) of section 20 to be treated in certain cases as if it were a qualifying amount.
- (3) The scheme may make provision about the making of applications under the scheme, including—
- (a) provision as to who is or is not eligible to apply,
- (b) provision as to the conditions that must be met in order to apply,
- (c) provision as to the form, manner and content of an application, and
- (d) provision as to information or evidence to be provided in support of an application.
- (4) The scheme may make provision about the determination of applications under the scheme, including—
- (a) provision in accordance with which the Commissioners must determine whether to exercise their discretion to repay or waive the payment of a qualifying amount, and
- (b) provision in accordance with which the Commissioners must determine how much of any qualifying amount to repay or waive.
- (5) The scheme may make provision authorising the Commissioners to make a repayment or waiver conditional—
- (a) on the applicant or any other person agreeing to the termination or variation of the qualifying agreement concerned,
- (b) on the applicant or any other person making a new agreement with the Commissioners, or

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- (c) on the satisfaction of such other conditions as may be specified or determined by the Commissioners.
- (6) The scheme may provide that in making any determination under the scheme the Commissioners may or must take account of—
- (a) the effect the qualifying agreement concerned has had, or may have, on the applicant or any other person (for example, the effect it has had, or may have, on any liability, relief or benefit),
  - (b) the effect any repayment or waiver would have on the applicant or any other person (for example, the effect it would have on any liability, relief or benefit), and
  - (c) such other matters as may be specified.
- (7) The scheme may make provision as to the effect, if any, a repayment or waiver is to have on—
- (a) the entitlement of the applicant, or any other person, to a payment, benefit or relief under an enactment,
  - (b) the amount or value of such a payment, benefit or relief,
  - (c) any liability the applicant, or any other person, may have under an enactment, or
  - (d) the extent of any such liability.
- (8) The scheme may make provision for or in connection with the recovery by the Commissioners of—
- (a) any amount repaid under the scheme in circumstances where the Commissioners consider that the repayment should not have been paid, or
  - (b) any amount the payment of which has been waived under the scheme in circumstances where the Commissioners consider that the waiver should not have been granted.
- (9) The scheme may make—
- (a) different provision for different purposes or cases,
  - (b) provision generally or for specific cases,
  - (c) provision subject to exceptions, and
  - (d) incidental, supplementary, consequential or transitional provision.
- (10) The scheme may be amended by the Commissioners from time to time.
- (11) An amendment making provision of a kind authorised by subsection (7) may have effect in relation to a repayment paid or waiver granted before the amendment comes into force, but only if the principal effect of the amendment is to benefit persons other than the Commissioners.
- (12) In this section—
- “the scheme” means the scheme established under section 20,
  - “specified” means specified in the scheme, and
  - “the Commissioners”, “qualifying amount” and “qualifying agreement” have the meaning they have in section 20.

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