

1 Employment income provided through third parties

Schedule 1 makes provision about employment income provided through third parties.

SCHEDULES

SCHEDULE 1

Section 1

EMPLOYMENT INCOME PROVIDED THROUGH THIRD PARTIES

PART 1

CLOSE COMPANIES

Application of Chapter 2 of Part 7A to ITEPA 2003

- 1 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) an individual (“A”) is a director or an employee, or a former director or a former employee, of a close company (“B”),
 - (b) there is an arrangement (“the relevant arrangement”) to which A is a party or which otherwise (wholly or partly) covers or relates to A,
 - (c) the main purpose, or one of the main purposes, of the arrangement so far as it covers or relates to A or B is the avoidance of –
 - (i) income tax,
 - (ii) national insurance contributions,
 - (iii) corporation tax, or
 - (iv) a charge to tax under section 455 of CTA 2010 (loans to participators),
 - (d) 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,
 - (e) B enters into a relevant transaction (see section 554AB),
 - (f) at the time B enters into the relevant transaction, or at any time during the immediately preceding period of one year, A has a material interest in B (see subsection (4)),
 - (g) 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,
 - (h) a relevant step is taken by a relevant third person,
 - (i) 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.
- (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)(d), 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) Subject to subsection (5), section 68 (meaning of “material interest” in a company) applies for the purposes of this section as it applies for the purposes of the benefits code.
- (5) In section 68 as it applies for the purposes of this section, “participator” –
 - (a) 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
 - (b) 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.
- (6) See also sections 554AD to 554AF (further interpretation and supplementary provision).

554AB Meaning of “relevant transaction”

- (1) For the purposes of section 554AA(1)(e) and (g), 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,
 - (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 purpose of determining the likely effective duration of a lease of any premises granted to a

relevant third person (“the original lease”) for the purposes of subsection (2)(g).

- (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) Part 23 of CTA 2010 has effect for determining the meaning of “distribution” in subsection (1) 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.
- (3) But a transaction is not an excluded transaction if there is a connection (direct or indirect) between the transaction and a tax avoidance arrangement.

554AD Meaning of “relevant third person”

- (1) In section 554AA(1) and 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.
- (2) If B is a member of a group of companies at the time the relevant step is taken, in subsection (1) references to B are to be read as including

references to any other company which is a member of that group at that time.

- (3) If, at the time the relevant step is taken, B is a company that is –
- (a) a wholly-owned subsidiary of a limited liability partnership, or
 - (b) a subsidiary undertaking of a parent undertaking which is a limited liability partnership,
- in subsection (1) references to B are to be read as including references to the limited liability partnership and any company which is a wholly-owned subsidiary of it.
- (4) In subsection (3) –
- (a) “wholly-owned subsidiary” has the meaning given by section 1159(2) of the Companies Act 2006, and
 - (b) “subsidiary undertaking” and “parent undertaking” have the meaning given by 1162 of that Act.
- (5) Subsections (2) and (3) do not apply if there is a connection (direct or indirect) between the relevant step and a tax avoidance arrangement.

554AE Section 554A: meaning of “director”

- (1) For the purposes of section 554AA(2) “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.

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)(b), (c) and (d) references to A include references to a person linked with A.

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

Double taxation

- 2 (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 –

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- (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).”
- 3 (1) Schedule 11 to FA (No. 2) 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.”

PART 2

AMENDMENTS CONSEQUENTIAL ON PART 1

ITEPA 2003

- 4 (1) Part 7A of ITEPA 2003 (employment income provided through third parties) is amended in accordance with this paragraph.
- (2) In the italic heading before section 554A, at the end insert “: main case”.
- (3) In the heading of section 554A, at the end insert “: main case”.
- (4) In section 554Z(2) (interpretation: “A” and “B”) at the end insert “or, as the case may be, section 554AA(1)(a)”.

ITTOIA 2005

- 5 In section 39(4) of ITTOIA 2005 (meaning of “employee benefit scheme”), for paragraph (a) (but not the “or” following it) substitute –
- “(a) an arrangement (the “relevant arrangement”) which is –
 - (i) an arrangement within subsection (1)(b) of section 554A of ITEPA 2003 to which subsection (1)(c) of that section applies, or
 - (ii) an arrangement within subsection (1)(b) of section 554AA of ITEPA 2003 to which subsection (1)(c) of that section applies.”.

CTA 2009

- 6 In section 1291(4) of CTA 2009 (meaning of “employee benefit scheme”), for paragraph (a) (but not the “or” following it) substitute –
- “(a) an arrangement (the “relevant arrangement”) which is –
 - (i) an arrangement within subsection (1)(b) of section 554A of ITEPA 2003 to which subsection (1)(c) of that section applies, or
 - (ii) an arrangement within subsection (1)(b) of section 554AA of ITEPA 2003 to which subsection (1)(c) of that section applies.”.

FA (No. 2) 2017

- 7 (1) Schedule 11 to FA (No. 2) 2017 (employment income provided through third parties: loans etc. outstanding on 5 April 2019) is amended in accordance with this paragraph.
- (2) In paragraph 1 (relevant step) –
- (a) in sub-paragraph (3), for “section 554A(1)(e)(i) and (ii)” substitute “sections 554A(1)(e)(i) and (ii) and 554AA(1)(i)(i) and (ii)”;

- (b) in sub-paragraph (6) –
- (i) for “Sub-paragraph (1)” substitute “Sub-paragraphs (1) and (2)”, and
 - (ii) at the end insert “and paragraph 36A (double taxation: close companies)”.

PART 3

INFORMATION REQUIREMENT

8 Schedule 11 to FA (No. 2) 2017 (employment income provided through third parties: loans etc. outstanding on 5 April 2019) is amended in accordance with this Part.

9 After paragraph 35 insert –

“PART 3A

DUTY TO PROVIDE LOAN CHARGE INFORMATION TO HMRC

Duty to provide loan charge information

- 35A (1) Paragraph 35B applies if one of the following conditions is met.
- (2) The first condition is that –
 - (a) a person (“P”) is treated as taking a relevant step within paragraph 1 immediately before the end of 5 April 2019, and
 - (b) Chapter 2 of Part 7A of ITEPA 2003 applies by reason of that relevant step.
 - (3) The second condition is that –
 - (a) a person (“Q”) has made a loan which is an approved fixed term loan on 5 April 2019,
 - (b) if that day were the approved repayment date in relation to the loan –
 - (i) Q would be treated as taking a relevant step within paragraph 1 immediately before the end of that day, and
 - (ii) Chapter 2 of Part 7A of ITEPA 2003 would apply by reason of that relevant step, and
 - (c) Q is living immediately before the end of –
 - (i) 30 September 2019, or
 - (ii) if earlier, the approved repayment date.
 - (4) The third condition is that –
 - (a) paragraph 24(1) applies by reference to a loan, or a quasi-loan, made by a person (“S”) to a relevant person (“R”),
 - (b) R makes an application under paragraph 24(1) for S to be treated as mentioned in paragraph 24(1) in relation to the relevant step concerned,
 - (c) a favourable decision is made on the application before 6 April 2019,
 - (d) that decision is not revoked before 6 April 2019,

- (e) the first condition is not met, and
 - (f) S is living immediately before –
 - (i) the end of 30 September 2019, or
 - (ii) if earlier, the time given by sub-paragraphs (i) and (ii) of paragraph 24(1)(b).
- (5) The fourth condition is that –
- (a) none of the first, second and third conditions is met, and
 - (b) if the date specified in paragraph 1(1)(c) were 16 March 2016 and if paragraph 1(2) provided that a person who is treated as taking a relevant step by paragraph 1(1) is treated as taking that step immediately before the end of 16 March 2016 –
 - (i) a person (“T”) would be treated as taking a relevant step within paragraph 1 immediately before the end of 16 March 2016, and
 - (ii) Chapter 2 of Part 7A of ITEPA 2003 would apply by reason of that relevant step (using, for this purpose, the law that would be used to test whether that Chapter applies to a relevant step taken on 5 April 2019), and
 - (c) T is living immediately before the end of 5 April 2019.
- (6) Paragraph 35B does not apply in a case if, before 1 October 2019, a person has agreed, with an officer of Revenue and Customs, terms for the discharge of liability for income tax that cover all liability (if any) under Chapter 2 of Part 7A of ITEPA 2003 by reason of (as the case may be) –
- (a) the relevant step that P is treated as taking,
 - (b) any relevant step within paragraph 1 that Q is, or has yet to be, treated as taking by reference to the approved fixed term loan mentioned in sub-paragraph (3),
 - (c) any relevant step within paragraph 1 that S is, or has yet to be, treated as taking by reference to the loan or quasi-loan mentioned in sub-paragraph (4), or
 - (d) any relevant step within paragraph 1 that T is, or has yet to be, treated as taking by reference to the loan or quasi-loan by reference to which T would be treated as taking the relevant step mentioned in sub-paragraph (5)(b)(i).
- 35B (1) A, or A’s personal representatives, must provide the loan charge information (see paragraph 35C(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.

“Loan charge information”

35C (1) For the purposes of paragraphs 35B and 36, the “loan charge information” consists of –

- (a) A’s name and, if A’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) A’s national insurance number (if any),
- (d) the unique taxpayer reference number (if any) allocated to A by HMRC,
- (e) if the loan or quasi-loan that is or would be the subject of the relevant step mentioned in paragraph 35A(2)(a) or (4)(b) or (5)(b)(i), or the loan mentioned in paragraph 35A(3)(a), is made to someone other than A, the name of the person to whom it is made,
- (f) B’s name,
- (g) the name of the relevant arrangement,
- (h) the reference number (if any) allocated to the relevant arrangement by HMRC under section 311 of FA 2004 (disclosure of tax avoidance schemes: arrangements to be given reference number),
- (i) any other reference number allocated by HMRC in connection with the relevant arrangements or the relevant step,
- (j) 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 Chapter 2 of Part 7A of ITEPA 2003 by reason of the relevant step that P, Q or S is treated as taking, the date of that agreement and the amount of the liability to which it relates,
- (k) if a loan is or would be the subject of the relevant step mentioned in paragraph 35A(2)(a) or (4)(b) or (5)(b)(i), or in a case within paragraph 35A(3)(a), the loan payment information (see sub-paragraph (2)), and
- (l) if a quasi-loan is or would be the subject of the relevant step mentioned in paragraph 35A(2)(a) or (4)(b) or (5)(b)(i), 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 17 March 2016,
- (e) the details of any repayment that is to be disregarded under paragraph 4,

- (f) the amount of principal under the loan that has been released or written off in each relevant tax year, and
 - (g) whether the liability for income tax arising because of the application of Chapter 2 of Part 7A of ITEPA 2003, or section 188 of that Act, by reason of the release or writing-off has been paid.
- (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 17 March 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 4,
 - (f) the amount by which the initial debt amount has been reduced by release or writing off in each relevant tax year, and
 - (g) whether the liability for income tax arising because of the application of Chapter 2 of Part 7A of ITEPA 2003, or section 188 of that Act, by reason of the release or writing-off has been paid.
- (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 11.
- (6) In this paragraph and in paragraphs 35F to 35I, “HMRC” means Her Majesty’s Revenue and Customs.

Power to amend paragraph 35C

- 35D The Commissioners for Her Majesty’s Revenue and Customs may by regulations amend paragraph 35C so as to—
- (a) add, remove or amend an entry in a list of information, and
 - (b) make incidental provision.

Penalties for failure to comply

- 35E (1) A person who fails to comply with section 35B is liable to a penalty of £300.

- (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.

Penalties for inaccurate information and documents

- 35F (1) This paragraph applies if—
- (a) in complying with the duty under paragraph 35B, 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.

Reasonable excuse

- 35G (1) Liability to a penalty under paragraph 35E 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.

Assessment of a penalty

- 35H (1) Where a person becomes liable for a penalty under paragraph 35E or 35F—
- (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 35E must be made before 1 October 2021.
- (3) An assessment of a penalty under paragraph 35F must be made before 1 October 2023.

Appeals

- 35I (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 35E or 35F, 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 35H 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.

Enforcement

- 35J (1) A penalty under paragraph 35E or 35F must be paid –
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 35H 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 35E or 35F may be enforced as if it were income tax charged in an assessment and due and payable.”
- 10 (1) Paragraph 36 (duty to provide loan balance information to B) is amended in accordance with this paragraph.
- (2) In sub-paragraph (2) for “loan balance information” substitute “loan charge information (see paragraph 35C)”.
 - (3) Omit sub-paragraphs (3), (5) and (6).

- (4) In the italic heading preceding paragraph 36, for “balance” substitute “charge”.

PART 4

COMMENCEMENT

- 11 The amendments made by paragraphs 1, 2 and 4 of this Schedule in Part 7A of ITEPA 2003 have effect in relation to relevant steps taken on or after 6 April 2018.
- 12 The amendment made by paragraph 5 of this Schedule in section 39 of ITTOIA 2005 has effect in relation to employee benefit contributions (as defined in that section) made, or to be made, on or after 6 April 2018.
- 13 The amendment made by paragraph 6 of this Schedule in section 1291 of CTA 2009 has effect in relation to employee benefit contributions (as defined in that section) made, or to be made, on or after 1 April 2018.