

Clause 1: Employment income provided through third parties

Summary

1. This clause introduces a new charge on outstanding loans from disguised remuneration schemes (the loan charge). This will apply to loans made after 5 April 1999 that are outstanding on 5 April 2019. There are several exemptions and the charge can be postponed in certain circumstances.
2. Schedule 1, introducing the loan charge has five parts, as follows:
 - Part 1 sets out the conditions, and definitions, that must be met for the new loan charge to apply;
 - Part 2 sets out the circumstances, and process, when the loan charge can be postponed;
 - Part 3 sets out the exclusions for the new loan charge;
 - Part 4 sets out some supplementary provisions, such as the interaction between the new loan charge and the remittance basis; and
 - Part 5 sets out some consequential changes to existing legislation.

Details of the clause and Schedules

3. This clause introduces Schedule 1.

Schedule 1: Part 1: Application of Part 7A of ITEPA 2003

4. Part 1 of the Schedule introduces the new charge on outstanding disguised remuneration loans.

Relevant step

5. Paragraph 1 deems the outstanding loan balance to be a relevant step, which means all the provisions within Chapter 2 of Part 7A apply to the outstanding loan balance.
6. Sub-paragraphs (1) to (3) deem loans that are outstanding to be a relevant step within Part 7A, taken by the person who has made the loan. The relevant step occurs on 5 April 2019 unless a postponement has been granted. The taking of a relevant step will result in a tax charge arising under Part 7A, where the other gateway conditions in section 554A of Part 7A are met.

7. Sub-paragraphs (4) and (5) ensure the relevant sections of Part 7A apply identically to the loan charge.
8. Sub-paragraph (6) makes clear that the application of the loan charge is subject to specific provisions where an Accelerated Payment has been paid.
9. Sub-paragraph (7) makes clear that the loan charge can apply to loans even where the loan no longer exists.

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

10. Paragraph 2 sets out the meaning and definition of some of the terms used in this Schedule.
11. Sub-paragraph (1) defines a loan.
12. Sub-paragraphs (2) and (3) defines a quasi-loan. This is a similar definition to the definition of a loan transfer in subsection 554C(1)(aa).
13. Sub-paragraphs (4) and (5) make clear that loans and quasi-loans that have been replaced are within the scope of the loan charge.
14. Sub-paragraph (6) defines “approved repayment date”.

Meaning of “outstanding”: loans and quasi-loans

15. Paragraphs 3 to 18 set out the how the outstanding loan, and quasi-loan, balance is calculated including how non-sterling currencies are taken into consideration. The starting point is the initial amount lent, plus any further amounts lent, which is then reduced by any repayments.
16. Paragraph 3 sets this principle out for loans in sub-paragraphs (1) and (2). Sub-paragraph (3) requires repayments to be only in money after 16 March 2016.
17. Paragraph 4 provides that repayments in money after 16 March 2016 will be ignored in the calculation if they are made as part of a further avoidance arrangement, or if they are subsequently subject to a relevant step and tax is due but unpaid.
18. Paragraph 5 provides that loans made by a third party and subsequently acquired by the employer or employee will be treated as outstanding and subject to the loan charge on 5 April 2019.
19. Paragraph 6 defines the loan currency and that any currency conversion should be at the spot rate.
20. Paragraph 7 provides that where the loan and repayment are both in the same non-sterling currency the outstanding balance is calculated and then converted to sterling.
21. Paragraph 8 provides that where a repayment is made in a currency different to the loan it is converted to the loan currency on the date it is made.
22. Paragraphs 9 and 10 provide that where a loan is made in a currency other than sterling in the expectation that it will depreciate in value the principal amounts and repayments are converted to sterling on the day they are made.

23. Paragraphs 11 to 18 set out the same underlying principles for quasi-loans. Where the quasi-loan is a money debt the same conditions as for loans in paragraph 3 apply. However, quasi-loans also include situations where the right to repayment is in an asset, so paragraph 4 sets out how the principle applies and what repayments are acceptable. Paragraphs 14 to 18 set out how quasi-loans and repayments in non-sterling currencies are taken into consideration.

Meaning of “approved fixed term loan”

24. Paragraph 19 defines an “approved fixed term loan”. The loan must have been made before a certain date and have certain conditions that cannot have been changed. The loan must also have been approved by HMRC under paragraph 20.

Schedule 1: Part 2: Approval of a qualifying loan etc.

25. Part 2 of the Schedule sets out the conditions and processes to apply for postponement of the new loan charge.

Application to HMRC

26. Paragraphs 20 sets out who can make an application for a postponement for an “approved fixed term loan”, when and how the application can be made, as well as what information they must provide.

Conditions

27. Paragraphs 21 and 22 set out the two conditions, only one of which must be met, to qualify for approval. Paragraph 7 sets out the condition for loans where regular repayments of principal have been made. Paragraph 8 sets out the commercial terms condition that can apply to loans that don't meet the existing exclusion at section 554F of Part 7A.

Accelerated payments

28. Paragraphs 23 and 24 allow the loan charge to be postponed where the relevant person has paid an Accelerated Payment.
29. Paragraph 23 sets out the conditions that must be met to qualify for the postponement. Sub-paragraph (1) sets out the conditions. Sub-paragraphs (2) to (4) define some of the terms used in sub-paragraph (1) and also require the Accelerated Payment to be related to the same arrangement. Sub-paragraphs (5) to (6) make clear that the provision applies equally to National Insurance contributions, and that where tax and National Insurance contributions are relevant a joint application can be made.
30. Paragraph 24 sets out the process and the effect of the postponement. Sub-paragraphs (1) and (2) give effect to the postponement and ensure, if the Accelerated Payment is repaid, the loan charge applies 30 days after the Accelerated Payment is repaid. Sub-paragraphs (3) to (6) define how, and when, the claim to postponement must be made. Sub-paragraphs (7) to (8) set out when a postponement can be withdrawn and the effect of the withdrawal.

Schedule 1: Part 3: Exclusions

31. Part 3 of the Schedule sets out the exclusions that, if met will, prevent the loan charge from applying.

Commercial transactions

32. Paragraphs 25 and 26 set out the exclusion for loans made on commercial terms. This closely follows the existing exclusion at section 554F of Part 7A.

Transfer of employment-related loans

33. Paragraphs 27 and 28 set out the exclusion for transferring employment-related loans between new and old employers. This closely follows the new exclusion at section 554OA of Part 7A.

Transactions under employee benefit packages

34. Paragraphs 29 and 30 set out the exclusion for loans made under an employee benefit package available to employees. This closely follows the existing exclusion at section 554G of Part 7A.

Cases involving employment-related securities

35. Paragraphs 31 and 32 set out the exclusion for loans used to purchase employment-related securities. This closely follows the existing exclusion at subsections 554N(13) to (16) of Part 7A.

Employee car ownership schemes

36. Paragraphs 33 and 34 set out the exclusion for loans made under an employee car ownership scheme. This closely follows the existing exclusion at section 554O of Part 7A.

Acquisition of unlisted employer shares

37. Paragraph 35 is an exclusion from the loan charge unrelated to any existing exclusion in Part 7A. It applies to loans, or quasi-loans, made before 9 December 2010 used to purchase shares in the unlisted employer, and provides that the loan charge will not apply to such a loan if it is repaid within 12 months from when the shares are sold.

Schedule 1: Part 4: Supplementary provision

38. Part 4 of the Schedule introduces some supplementary provisions that will ensure the loan charge operates as intended.

Duty to provide loan balance information to B

39. Paragraph 36 creates an obligation on the parties of an arrangement that is within the scope of the loan charge to provide information to the employer. This will help ensure the employer has the right information to calculate the outstanding loan balance and decide if the loan charge applies.
40. Sub-paragraph (1) defines which loans are within the scope of the obligation to

provide information to the employer.

41. Sub-paragraph (2) requires both the employee and the third party to provide the information within ten days after the loan charge applies.
42. Sub-paragraph (3) defines the information that must be provided, which is everything the employer needs to decide if the loan charge applies.
43. Sub-paragraph (4) defines the loan charge date and ensures this takes into consideration any postponements.
44. Sub-paragraphs (5) and (6) require the employer and third party to inform HMRC if they were unable to contact the employer.
45. Sub-paragraph (7) defines some of the terms used in sub-paragraph (1).

Double taxation

46. Paragraphs 37 and 38 prevent a benefit under the cheap taxable loans rules in Chapter 7 of Part 3 of ITEPA 2003 applying once the loan charge has arisen on the same underlying loan.

Remittance basis

47. Paragraphs 39 to 43 make amendments to the existing remittance basis rules in Part 7A to make reference to the loan charge.
48. Paragraphs 40 and 41 amend sections 554Z9 and 554Z10 of Part 7A to ensure the loan charge is taxable specific income in the tax year the loan charge arises or when it is later remitted to the UK.
49. Paragraphs 42 and 43 make consequential amendments to sections 554Z11 and 554Z11A of Part 7A to include the additions made in paragraphs 40 and 41.

Interpretation: “tax avoidance arrangement” etc.

50. Paragraph 44 defines a tax avoidance arrangement.
51. Paragraph 45 ensures “A” and “B” take the same meaning as in Part 7A.

Schedule 1: Part 5: Consequential amendments

52. Part 5 of the Schedule introduces some minor consequential amendments.
53. Paragraph 46 make consequential amendments to Part 7A to include references to the new loan charge.
54. Paragraph 47 amends paragraph 59 of Schedule 2 to the Finance Act 2011 to include the new loan charge. This will ensure that the relief under that paragraph extends to the new loan charge.

Background note

55. These changes are part of a package of proposals announced at Budget 2016 to tackle existing and prevent future use of disguised remuneration avoidance schemes.
56. Changes to strengthen the current rules were enacted in Finance Act 2017 to prevent the future use of schemes.
57. The existing use of schemes will be tackled by the introduction of a new charge on disguised remuneration loans that were made after 5 April 1999 and remain outstanding on 5 April 2019. Comprehensive provisions to ensure there is no double taxation are also being introduced in this clause. All of these changes were subject to a technical consultation that ran from 10 August 2016 to 5 October 2016.
58. These changes will help to meet the government's objective of tackling tax avoidance and will ensure that users of disguised remuneration avoidance schemes pay their fair share of tax and National Insurance contributions.
59. Since the Finance Bill 2017 was first published in March 2017 there have been six minor technical amendments. These changes do not reflect a change in policy and have been made to make clear the application of the legislation. The changes include:
 - an amendment to paragraph 4 to make clear the outstanding loan balance includes money repayments that are subsequently subject to a relevant step and tax is due but unpaid. A corresponding amendment is made to paragraph 12 for quasi-loans;
 - an amendment to paragraph 23 to make clear the Accelerated Payment postponement provision applies equally to National Insurance contributions, as well as tax, and that where tax and National Insurance contributions are relevant a joint application can be made; and
 - amendments to paragraphs 20 and 24 to set out when a postponement can be withdrawn and the effect of the withdrawal.
60. If you have any questions about these changes, or comments on the legislation, please contact the Income Tax Structure and Earnings Team by email: incometax.structure@hmrc.gsi.gov.uk.