

Explanatory Note: draft clause

Employment income provided through third parties

Summary

1. This clause introduces the next set of changes as part of the measure to tackle disguised remuneration tax avoidance schemes.
2. The clause introduces a number of new sections to the employment income provided through third parties' rules in Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). These new sections introduce a new gateway, and consequential double taxation relief provisions, to Part 7A ITEPA 2003.
3. The clause also introduces changes to the new charge on outstanding loans from disguised remuneration schemes (the loan charge), which is being legislated in Finance Bill 2017. These include the introduction of a requirement for employees in scope of the loan charge to provide additional information to HMRC about the loans they have received, and some further changes due to the introduction of the new gateway in Part 7A ITEPA 2003.
4. The clause and Schedule has four Parts, as follows:
 - Part 1 sets out the new close companies' gateway and the double taxation relief provisions;
 - Part 2 details some consequential amendments due to the introduction of the new gateway;
 - Part 3 sets out the new information requirement for the loan charge; and
 - Part 4 sets out when all the changes and provisions will commence.

Details of the clause and Schedule

Schedule 1: Part 1: Close companies

Application of Chapter 2 of Part 7A

5. Paragraph 1 inserts new sections 554AA to 554AF into Part 7A ITEPA 2003 (Part 7A). These new sections provide for a new, and additional, gateway, the close companies' gateway, to be included at the beginning of Part 7A. If the conditions of either the existing gateway at section 554A, or the new close companies' gateway, are met a Part 7A charge can arise.

6. New section 554AA provides that a Part 7A charge will arise where all the conditions of subsection (1) are met. Broadly, this requires there to be an arrangement which has as one of its main purposes the avoidance of tax and which is intended to benefit an employee who has some influence over their close company employer. Under the arrangement the employer has to make a payment to a third party and a third party has to take a relevant step deriving from that payment. New subsections (2) to (6) define some of the terms used in new subsection (1).
7. New section 554AB defines the payment made by the employer, the relevant transaction in new section 554AA, as, broadly, a payment within the meaning of the existing section 554C. The definition isn't replicated directly as they refer to different parties undertaking the transaction. The payment by the employer must meet the conditions of new section 554AB for the close companies' gateway to apply.
8. New section 554AC excludes certain commercial transactions that aren't connected with an avoidance arrangement from being a relevant transaction in new section 554AB. If the payment by the employer meets the conditions of this section the close companies' gateway will not apply.
9. New section 554AD defines the third party for the purposes of new section 554AA in the same way subsections 554A(7) to (10) apply to the existing gateway at section 554A. The only difference is new subsection 554AD prevents the close companies' gateway applying to transactions taken between the entities in a group of companies wholly owned by a Limited Liability Partnership.
10. New section 554AE defines "director" to include a shadow director for the purposes of new section 554AA.
11. New section 554AF adds further supplementary rules for the application of the close companies' gateway at new section 554AA.

Double taxation

12. Paragraph 2 inserts new section 554Z2A into Part 7A, which sets out when the loans to participators rules in Chapter 3 of Corporation Tax Act 2010 (CTA 2010) have priority. Broadly, where a section 455 CTA 2010 charge arises by virtue of section 458 CTA 2010 at the same time as the Part 7A charge by virtue of the close companies' gateway, only the Part 7A charge will be relieved providing the section 455 CTA 2010 charge is paid in full by the due date.
13. Paragraph 3 inserts new paragraph 36A into the proposed Schedule 11 of Finance Bill 2017. This follows the approach of new section 554Z2A and applies it to the loan charge.

Schedule 1: Part 2: Amendments consequential on Part 1

14. Part 2, including paragraphs 4 to 7, provides for consequential amendments to Income Tax (Trading and Other Income) Act 2005 and Corporation Tax 2009 to add the additional close companies' gateway to the definition of an employee benefit scheme. Part 2 also makes a consequential amendment to the loan charge in proposed Schedule 11 of Finance Bill 2017.

Schedule 1: Part 3: Information requirement

15. Part 3, and paragraph 8, introduces the new information requirement for the loan charge, and a consequential change, to the proposed Schedule 11 of Finance Bill 2017.
16. Paragraph 9 introduces new paragraphs 35A to 35J, which set out the information requirement.
17. New paragraph 35A sets out the conditions that must be met for someone to be required to provide this additional information. Broadly, the information must be provided if the loan charge arises on 5 April 2019, or the loan charge would have arisen on 16 March 2016 if that was relevant date. The information will not need to be provided if a full settlement has been reached before the deadline to provide the additional information, and consequently no further tax is due. Provisions also make clear that the additional information is required where the loan charge date has been postponed following a successful application under Part 2, unless a full settlement has been reached before the deadline to provide the additional information.
18. New paragraph 35B sets out who must provide the information and by what date.
19. New paragraph 35C defines the information that must be provided for both loans and quasi-loans.
20. New paragraph 35D provides for the information that must be provided, as set out in new paragraph 35C, to be capable of being amended by regulations.
21. New paragraph 35E sets out the penalties that can arise for failing to comply with this information requirement.
22. New paragraph 35F sets out the penalties that can arise where inaccurate information is provided.
23. New paragraph 35G defines a reasonable excuse, which will prevent a penalty arising under new paragraph 35E.
24. New paragraph 35H sets out how, and when, HMRC may assess an information requirement penalty.
25. New paragraph 35I sets out how, and when, an appeal against an information requirement penalty can be made.
26. New paragraph 35J sets out when an information requirement penalty must be paid and how it will be enforced.
27. Paragraph 10 makes consequential changes to the information obligation in paragraph 36 of Schedule 11 of Finance Bill 2017. This will ensure that the information provided to the employer is the same as the information provided to HMRC.

Schedule 1: Part 4: Commencement

28. Part 4 sets out when the provisions in the other Parts of this Schedule commence. This will be 6 April 2018 for all other paragraphs except paragraph 6 which relates to corporation tax and will apply from 1 April 2018.

Background note

29. 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. 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.
30. The future use of disguised remuneration avoidance schemes is being prevented by strengthening the current rules. This clause introduces the new close companies' gateway to the current rules. Other changes to the current rules were enacted in Finance Act 2016 and Finance Act 2017.
31. The existing use of disguised remuneration avoidance schemes will be tackled by the new charge on disguised remuneration loans that remain outstanding on 5 April 2019, which is being legislated in Finance Bill 2017 currently before Parliament. This clause makes further provision in connection with that new charge.
32. The majority of these changes, including the close companies' gateway and the loan charge, were subject to a technical consultation that ran from 10 August 2016 to 5 October 2016.
33. A technical note providing more detail, including examples, on the close companies' gateway and the new information requirement for the loan charge, has been published and can be found on the gov.uk site.
34. 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.