



Finance Act 2020

2020 CHAPTER 14

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Loan charge

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

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- (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).
- (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.”

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(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 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,

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- (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.”

Changes to legislation:

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