



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

18 July 2019

Dear Colleague

DISGUISED REMUNERATION LOAN CHARGE

The Government is fully aware of concern about the impact of the disguised remuneration Loan Charge. This has been seen in Parliament in debates in both the Commons and the Lords, and in a report by the Lords Economic Affairs Committee, *The Powers of HMRC: Treating Taxpayers Fairly*, published in December 2018. It has also been reflected during a process of consultation I have undertaken since taking office, which has included discussions with officials, professional bodies, independent experts, the Adjudicator, the official Opposition and colleagues across the House.

I also met members of the Loan Charge All-Party Parliamentary Group, and their secretariat from the Loan Charge Action Group, to listen to their views; and I have considered the documents they have published to date.

I am writing now to update you on new measures by HMRC designed to address some of the representations made during this consultation process.

The Loan Charge

The Loan Charge was announced at Budget 2016 and passed into legislation in Finance Act (No. 2) 2017. It is designed to collect tax due on disguised remuneration tax avoidance schemes; more than 250 such schemes have been identified by HMRC. The Supreme Court found the most well-known scheme used by Rangers Football Club, and schemes similar to it, to be ineffective in law. The Government and HMRC repeatedly encouraged those who had used disguised remuneration schemes to come forward by 5 April 2019, when the Loan Charge came into force.

Disguised remuneration tax avoidance

In a typical disguised remuneration scheme, an offshore trust is used to channel income to individuals in the form of a loan, which gets bigger each time the individual is paid.

Unlike normal loans, disguised remuneration loans are generally provided interest-free, without a schedule of repayments of the capital, and without any date for repayment. No assessment is made of the creditworthiness of the individual before the loan is made, and no security is sought against failure to repay. Individuals are not pursued for failure to repay the loan, there is no expectation that the loan will ever be repaid, and in practice the loan is not repaid. Thus these are highly contrived arrangements.

Typically, the individual is also paid a salary set below the level of the personal allowance, but still qualifying for the state pension.

It is claimed that this arrangement results in little, or no, income tax and employee National Insurance contributions being due on the payments received. The de facto employing company does not pay full employer National Insurance contributions, and often claims a deduction in their accounts for the payments made.

Since 2004 promoters have been required by law to provide a Disclosure of Tax Avoidance Scheme reference number to their clients. Some promoters even asked individuals to contribute to funds to fight the expected HMRC challenge to the schemes through litigation.

Any of the features above could have indicated to someone that they were benefitting from tax avoidance. Many people recognised this and declined to enter into these schemes.

The position of the Government and HMRC has always been that disguised remuneration schemes do not avoid tax due. Parliamentary statements on tax avoidance schemes go back to 2004, when the then Paymaster General made clear that the tax payable would be collected. HMRC have opened tens of thousands of enquires into users of these schemes, with the first cases being opened before 1999.

HMRC are also committed to challenging tax avoidance promoters and have over 100 under investigation. HMRC are doubling the resources devoted to this work. This includes identifying, challenging and pursuing in court scheme promoters, as well as using communications to disrupt and deter promotion activity.

More than 99.8 per cent of taxpayers do not use disguised remuneration schemes. It is unfair that a very small minority are seeking to avoid paying tax here.

Listening to stakeholders

There has been a considerable amount of misinformation in relation to the Loan Charge, which has caused confusion and anxiety among those affected. However, there are also some genuine concerns, which need to be addressed.

Specifically, these include concerns that the policy may breach established norms of taxation by reopening tax years which have already been signed off and agreed with HMRC; and that there is a lack of flexibility for those in financial difficulty who want to settle.

There have also been concerns that HMRC have been slow or inaccurate in providing calculations to people wishing to settle, and that the tone of letters could be seen as aggressive. HMRC acknowledge that the service provided has sometimes fallen short and they have moved resources to deal with the large numbers of people who have shown an interest in settling.

More generally, there have been concerns about whether HMRC's treatment of taxpayers who need additional support could be improved, and whether a proper overall balance between enforcement and fairness is being observed by HMRC.

New Measures

In response, the Government has now agreed with HMRC some important changes:

1. HMRC will publish guidance to make specifically clear in relation to the Loan Charge that HMRC will not seek to tax the same income twice.
2. HMRC will take a more collaborative approach to communications about the Loan Charge, drawing on advice from the Chartered Institute of Taxation and the Institute of Chartered Accountants of England and Wales, among others.
3. HMRC will not apply the Loan Charge to a tax year where an enquiry was closed on the basis of fully disclosed information.
4. HMRC will exercise additional flexibility for individuals settling under the published terms who are in genuine hardship. Where a person has no realistic prospect of paying tax due under the Loan Charge, HMRC will stop pursuit and leave any unpaid debt to be collected later only if their circumstances improve, in line with current practice.

HMRC will set out further detail on items 3. and 4. in the coming weeks.

Further support for MPs

I am aware that the loan charge has been raised by many individual constituents and it is important that Members of Parliament have the information they need to understand and assist with any concerns.

HMRC are keen to take a still more proactive role in briefing and assisting colleagues who may have concerns about the loan charge. HMRC officials are also happy to discuss with them and any affected constituents their specific cases, subject to proper confidentiality.

If you have any questions about the Loan Charge, please do not hesitate to contact me.

A handwritten signature in black ink, appearing to read 'Jesse'.

JESSE NORMAN MP