All-Party Parliamentary Loan Charge Group

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Rt. Hon. Philip Hammond MP
Chancellor of the Exchequer
1 Horse Guards Road
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19th February 2019

Dear Chancellor

On behalf of Ruth Cadbury, Ross Thomson, Stephen Lloyd and the Loan Charge APPG, I would like to thank you for meeting with us last week, on to discuss NC26 of the Finance Bill and the associated review of the 2019 Loan Charge.

We were grateful to have a discussion with you, Mel Stride, officials and senior HMRC staff. We would like to follow the meeting up with a few points, in writing.

The APPG Inquiry

Firstly, we are pleased you will accept as evidence to the review our APPG inquiry, which will take place over the next six weeks. We will publish the report in mid-March and send to you. You have committed that you will then genuinely read the report and the evidence contained; we also hope that in the spirit of any genuine policy review, not least one where there are so many people facing serious consequences, that you will openly consider what action to take with regard to making changes.

One issue you mentioned was that HMRC wished to be able to present their factual assessment of taxpayers' situations, where taxpayers facing the Loan Charge give evidence to the inquiry. Where taxpayers are prepared to do this, the APPG will seek to put their names forward.

Issues raised at our meeting

There were some issues of concern raised at the meeting that we wish to follow up with you now, prior to your review getting underway and before the APPG inquiry commences, as it appears there are some issues that require clarification.

1. The Treasury and HMRC seemed to doubt that there are people facing the loan charge who have no open (protected) tax years.

The APPG have been informed that there are people facing the Loan Charge who have no open tax years. This means either than HMRC never opened an enquiry into them, within the statutory time limits, or that an enquiry which had been opened, was subsequently closed by HMRC, stating there was no further tax to pay.

Can you please clarify why is it your belief that there are no taxpayers with no open tax years (no open enquiries) facing the Loan Charge?

As you know, the Loan Charge overrides pre-existing taxpayer protections and allows HMRC to impose the 45% charge on all loans since 1999. This means including both where people had closed years and cases where people had closed enquiries. Can you please confirm, given your surprise at this point during our meeting, that this is indeed the case and that people with no open enquiries will be affected?

It is surely unacceptable to be going after anyone for any year that is legally closed when the statutory time limit for challenge had passed, or where HMRC had closed an open enquiry, thus signing off the amount of tax paid at the time as acceptable. If this is indeed the case, why is the Loan Charge not restricted to open years only?

2. HMRC appear to suggest that many of the people caught by the Loan Charge have used Personal Service Companies (PSCs) and thus qualified as their own employer. This was in the context of HMRC saying they prioritise pursing employers rather than employees/scheme users.

The APPG have been informed that the vast majority of people facing the Loan Charge used umbrella companies, rather than PSCs. Can you please give us HMRC's view on what the proportion is and therefore the figures pertinent to each?

3. Following the questions asked by the House of Lords Economic Affairs Committee and my recent written House of Commons question, HMRC still seem unwilling to face the fact that HMRC contractors were using loan based schemes, and are therefore now also subject to the Loan Charge. At our meeting, HMRC suggested this was not only not their responsibility, but moreover that they were not aware of any of their contractors using these schemes.

Nonetheless, these schemes were declared on those contractors' tax returns, hence HMRC must have known that they were using them. We need a clear explanation about this as it seems impossible that HMRC were unaware of contractors, current or past, using such arrangements during any one tax year.

4. You were keen to suggest that those facing the Loan Charge should consider taking some form of legal action against promoters.

We are still unclear on what basis any such action could be pursued? Whatever your views, the schemes/arrangements were, and still are, as you know (and have had to admit), legal. Can you please therefore clarify on what basis you think any action could be taken against promoters of the schemes?

5. You again gave the impression that HMRC themselves were pursuing scheme providers. We are not aware of any successful HMRC action against loan scheme providers or with regard the loan element of schemes. As you are well aware, this is not what the Rangers case judgement focused on. Indeed HMRC, having lost its argument twice (in the FTT and UTT), were advised to stop arguing that loans are taxable. The Rangers case Supreme Court judgement concluded that the payments from the employer (Rangers) to the Employee Benefit Trusts (EBTs) were taxable, but the existing legal position is that the loans paid from the EBTs to the employer were loans and not taxable as income.

Can you tell therefore please tell us, in writing, what legal action HMRC have taken *against loan schemes and loan scheme providers* and what was the outcome in relation to those cases?

The Treasury Review

As discussed, we strongly urge you to conduct a genuine review of the Loan Charge, considering all the concern and the potential impact on many people's lives.

We wish to ask you to ensure that the review includes, as it should, the following aspects:

Human Impact

It is now established, through Freedom of Information requests, that no estimate of the number of bankruptcies was done nor how many families would suffer breakdown. The sole assessment was that the Loan Charge would not impact the wider population in such a manner.

Hence it is vital that your review establishes:

- The impact on those facing the Charge, including family breakdown and mental health issues
- The expected number of bankruptcies
- The revised estimate of how much the Loan Charge will actually raise when taking into account the bankruptcies and the people who simply cannot pay the sums requested

HMRC

There remain serious concerns about HMRC and how they are both calculating liabilities and pursuing those facing the Loan Charge.

It is therefore vital that your review establishes:

- How HMRC have calculated liabilities
- The activities and conduct of HMRC in dealing with those affected
- The reality and affordability of HMRC's repayment plans
- Action against promoters of schemes
- The overall estimate of how much the Loan Charge will actually contribute to the Exchequer, which should be the revised estimate as above, less the projected cost to the taxpayer in terms of bankruptcies, the loss of tax of those unable to work again due to

bankruptcy and mental breakdown, those who emigrate and those who commit suicide - none of whom will pay tax going forward. Only this figure, not yet estimated, will reveal the genuine amount the Loan Charge will actually raise.

So can you please let us know if the Treasury review will indeed cover these important areas?

We look forward to hearing from you and, considering the fact the review (and our inquiry) are starting imminently, and the looming introduction of the Loan Charge, we hope you will reply as promptly as possible, answering our questions and points in full.

Yours sincerely,

Rt Hon. Sir Ed Davey MP
Chair
APPG on the Loan Charge

On behalf of the Ruth Cadbury MP, Ross Thomson MP, Stephen Lloyd MP

Cc Rt. Hon. Mel Stride MP, Financial Secretary to the Treasury