



All-Party Parliamentary Loan Charge Group

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Lord Forsyth of Drumlean
Chairman
Economic Affairs Committee
Committee Office
House of Lords
London SW1A 0PW

25th July 2019

Dear Lord Forsyth,

We are writing to you following the appearance of Jesse Norman MP, Financial Secretary to the Treasury, before the Economic Affairs Committee on Tuesday, July 16th.

A number of items were announced by the Minister. We are writing to clarify one key issue where there is confusion and also to point out what we now know from other notable comments.

1. Confusing announcement regarding closed years

The Minister appeared to make a commitment that HMRC will not apply the Loan Charge to a tax year where an enquiry was closed “on the basis of fully disclosed information”.

In observing the session, it appears that members of the Committee understood that the Minister was referring to all closed years (where there had been full disclosure). This is not the situation at all.

Closed years is a standard and well understood phrase. It refers to tax years where there is no enquiry open and an individual’s tax return has been signed off by HMRC. These include years where HMRC never opened an enquiry and thus accepted an individual’s tax return (the majority of cases with closed years never had an enquiry opened). These also include where HMRC had opened an enquiry, but subsequently closed it.

The reality of the announcement made by the Minister is merely that they will be excluding years from the Loan Charge where HMRC opened an enquiry and then closed it (and where, in HMRC’s opinion, they are satisfied that everything was declared).

So this exemption will not apply to those individuals who disclosed their use of an arrangement in their tax returns and were not contacted by HMRC, which is the majority of closed years. It will also not apply in cases where an investigation was opened many years ago, but then never progressed or concluded, which appears to be a normal process of HMRC.

By using the phrase “closed years”, when referring to merely those years where an enquiry has been opened then closed, the Minister has given the misleading impression that the Treasury was announcing a new exemption to closed years. This is something that both the EAC and the APPG have called for. Alas, this is not the case.

Whilst the Loan Charge includes any closed years, it is clearly retrospective. It allows HMRC to demand payment of tax for tax years where they believe tax is due, but where no legal right would exist otherwise to demand the tax. The tax has never legally been proven to be due.

2. Admission that HMRC is not pursuing and cannot pursue promoters of loan arrangements

During the EAC session, the Minister made a clear admission that HMRC/Treasury were not pursuing promoters of loan arrangements, nor were they able to do so through the criminal courts. He admitted that the arrangements were legal.

This is clearly very different from what has been hitherto stated by Treasury Ministers. Previous statements by the Treasury have suggested that they have been pursuing promoters of loan arrangements. This inaccuracy was covered in the APPG Loan Charge Inquiry report when the reality (now admitted by the Minister) is that no single promoter of loan arrangements has been convicted for promoting loan schemes.

There is now a clear admission by the Financial Secretary to the Treasury, made to the Committee, ***that the Treasury and HMRC cannot and will not legally pursue promoters of loan arrangements.***

Previously both HMRC and the Treasury had given MPs and peers the impression that promoters would be pursued. The reality is that there have not been any convictions relating to the promotion of loan schemes.

3. An admission that they cannot or will not introduce retrospective legislation with regard to promoters when they have done so regarding those using these arrangements

What was particularly striking in the Minister’s comments, was the clear admission that the only way to pursue the promoters of loan arrangements would be via retrospective legislation. Something that he has now said the Government will not do.

His full statement to the Committee was as follows:

“But the difficulty is that in law, not allowing any retrospective law, it is hard to go after these people.”

The Minister has since repeated this same point on BBC Politics Live on Thursday, 18th July when he said, in response to a question about going after promoters:

“The difficulty is that unless they have done something that is actually illegal, it is very hard. And of course we are not seeking in any case to pass retrospective legislation that would allow us to go after those promoters.”

We now have the admission that the Treasury will not change the law retrospectively to enable HMRC to go after promoters. Yet this is exactly what the Government has done regarding those who used the loan arrangements whom of course were sold these schemes, as legal arrangements, by these same promoters.

The Loan Charge allows HMRC to retrospectively pursue individuals for tax that has never legally been proven to be due.

We believe this is profoundly wrong and a case of remarkable double standards that shows the fundamental injustice at the heart of the Loan Charge.

Yours sincerely,



Ruth Cadbury MP
Vice Chair



Ross Thomson MP
Vice Chair



Baroness Kramer
Vice Chair

On behalf of the Loan Charge APPG