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All-Party Parliamentary Loan Charge Group

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Rt Hon Sajid Javid, MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road, London
SW1A 2HQ

18th September 2019

Dear Chancellor,

Loan Charge Review

The APPG welcomes the appointment of Sir Amyas Morse to head the review into the Loan Charge and the publishing of Terms of Reference for the review.

We wrote to you on September 11th to make clear what the APPG believes this review should focus on. Our three points were that:

1. The review must be genuinely independent of the Treasury and HMRC
2. The review must take evidence from outside parties including those facing the Loan Charge
3. All settlement activity, enforcement and penalties must be suspended pending the outcome of the review and the implementation of the recommendations.

We have a number of very serious concerns about both the Terms of Reference, which have now been published, and the information sheet that was published alongside them.

Our concerns, in addition to the three points above, also involve the scope and timeframe of the review. The language used in the announcement appears designed to influence the outcome of the review.

Independence

We acknowledge the appointment of Sir Amyas Morse as the Reviewer and his previous experience both outside and inside Government.

The position of the APPG, which we have previously made clear, is that the appropriate person to conduct a genuinely independent review is an experienced tax judge who has the training to be impartial on this matter as well as a firm understanding of the tax laws relevant to the issue. We will not speculate on whether Sir Amyas's prior work at the National Audit Office and his comments about HMRC's approach to dealing with these tax arrangements influenced the decision to choose him to lead this review, but we simply reiterate our previous position.

It is wholly unacceptable to use HMRC and Treasury staff to support this review. The Terms of Reference state that, aside from Sir Amyas, the staff for the review will be “on-loan” from HMRC and the Treasury.

The APPG believes that it is totally inappropriate that the support staff for the review be sourced from either HMRC or the Treasury. Given the nature of the Loan Charge, the use of any HMRC and Treasury staff would, in fact, negate the validity of a genuinely independent review.

The Terms of Reference give a key role to the Director of Personal Tax, HM Treasury. This individual will agree the number of staff working on the review, and presumably also which individuals. The individual will also have the final decision, in consultation with HMRC, on whether the Treasury and HMRC are properly supporting the review by supplying required information.

We have been unable to ascertain who is the Director of Personal Tax, HM Treasury, or indeed whether such a role even exists. We require some clarification, including details of whom this person reports to. We find it totally inappropriate that this review, which is titled as independent, is still beholden to the goodwill of the Treasury and HMRC. It can hardly be independent if the only oversight comes from within the organisations which it should rightly be investigating.

The APPG is also concerned that the Terms of Reference clearly suggest that the review will be dictated by the Treasury behind the scenes. It states, “the timing and manner of the publication will be determined by the Chancellor of the Exchequer; the Reviewer is expected to use their discretion and will have the final say on the content of the report” and that, “the Reviewer has the final say on what is published in the report”. This strongly suggests that there may be prior stages of writing the report that could involve the Treasury and HMRC. It must be clearly stated that this is not the case and that the Treasury and HMRC will have no role in the review.

Without this, the review cannot be deemed reliable, independent or genuine.

Outside evidence

The Terms of Reference do not state that there will be a general call for evidence. This is essential for the review to be thorough. During our inquiry we received over 800 documents from individuals impacted by the Loan Charge and from tax industry professionals. Without these outside perspectives, we would not have been able to discover the facts and to reach our conclusions. We continue to receive evidence on a daily basis of HMRC’s bullying behaviour towards people facing the Loan Charge. Events have moved on significantly from when we concluded our call for evidence and it is essential that this new review takes in evidence of the current situation from people facing the Loan Charge and the professionals supporting them to understand all aspects.

The Loan Charge APPG will, of course, be sending the Loan Charge Inquiry Report and the 820 impact statements, which individuals permitted be shared, to the review. This, however, does not in any way eliminate the need for a call for additional, and more recent, evidence.

We note that there has now been an announcement by Sir Amyas that he will take evidence, which we welcome.

Suspension

The APPG welcomes the news that the process of agreeing settlements will be put on hold until after the review is completed. However, this is not sufficient to provide respite to those who are currently facing demands from HMRC to pay enormous sums of money under either Accelerated Payment Notices (APNs) or because they have already been pressured into signing settlement contracts by HMRC under threat of the Loan Charge itself.

We have had reports of HMRC stepping up action against people who have been issued with APNs, but have so far not paid them. This includes the threat of court action which could lead them to bankruptcy. We have had reports of people already selling assets, including family homes, to pay APNs or to pay the settlements.

The APPG is outraged by reports coming to us about the way that HMRC has conducted itself. We, and you, are all too aware that there have tragically been suicides by people driven to despair over HMRC's tactics, and we regularly hear from people who are concerned about the safety of individuals who are facing the Loan Charge. We particularly note the open letter recently published by the Loan Charge Action Group helpline volunteers which reports that they are in touch with five individuals who are in immediate danger of suicide.

The review absolutely must be accompanied by a pause in all related activity by HMRC – in particular, a suspension of the enforcement of payments under settlement contracts or APNs. A failure to do so would lead to the Loan Charge being, in effect, a post-mortem of the disaster that will unfold in coming weeks.

Scope

The review does make clear that, unlike the previous Treasury report (which was an embarrassing whitewash) changes could be recommended – including legislative changes – to the Loan Charge. The Government would then consider any such recommendations.

Whilst this is positive, we call on you to pledge to implement the recommendations of the review, whatever they may be, in full.

The scope on the review, however, seems unnecessarily narrow and focused on the Loan Charge itself. It does not appear to encompass the wider issues, such as, whether the Loan Charge undermines the rule of law by seeking to impose HMRC's opinion of the operation of various parts of the tax legislation with no possibility of appeal.

Such opinions from HMRC have not been tested yet by the courts.

There is a very real question as to what, if any, tax is due from the parties in these, quite complex, arrangements. The scope of the review also leaves out HMRC's use of APNs that have been issued en masse in an apparent attempt to bully taxpayers into submission.

The review also omits the fact that HMRC opened investigations many years ago and then proceeded to do nothing year after year, thus implying acceptance via their own complacency.

The review must look at the whole history of the Loan Charge and HMRC's conduct around it. These aspects have been strongly highlighted by many individuals and tax professionals. We also clearly highlighted this in our Loan Charge Inquiry Report.

The scope of the review should also include examining the underlying assumptions of HMRC and the Treasury. Our inquiry heard from tax experts that the culture of HMRC simply does not permit an incorrect assumption to be corrected.

Having realised that their previous assumption of tax being due under a certain interpretation of the law would not be upheld by the courts, HMRC could have simply put their hands up and said, "We made a mistake, the revenue that we promised cannot be collected under the law".

From the evidence that we heard, this may have been a more appropriate action for HMRC to take to deal with the problem of tens of thousands of historic tax inquiries that simply could not be progressed under existing law and powers. HMRC have had their hands bound by successive governments to the point where it is near impossible for them to admit to such a mistake. The review must be able to examine this very strong argument and possible alternative paths to resolve the historic inquiries.

There is additionally some ambiguity in the Terms of Reference around the repeated use of the phrase "…impact of the Loan Charge on individuals who have **directly entered** into disguised remuneration schemes" (emphasis added).

The APPG has heard from professionals that this could be interpreted in a variety of ways, but it appears that the Terms of Reference only allow for the review to consider one tranche of people impacted. We currently find ourselves unable to determine who is covered by the review and who is not. This leaves an unacceptable ambiguity with regard to who can pause settlements in order to await the outcome of the review. We feel strongly that no such restriction should be placed on the Reviewer. If the Loan Charge is unacceptable for one group of taxpayers, then it is unacceptable for all. The reviewer should have the power to determine this.

Timeframe

The short timeframe for the review means that it will be forced to be a rush job. The scope appears to have been limited with this timeframe in mind.

HMRC and the Treasury have had several years during which they could have conducted a proper review to understand the implications of the Loan Charge, both before it was enacted and in the period from the legislation being passed to now. To rush this review through in a mere two months from start to finish is wholly unacceptable.

The review needs the proper time to examine all the issues in-depth and to be **thorough**, which the Prime Minister said it would be. A bare minimum of 6 months is needed to accomplish this. The House of Commons expressed on 11th April 2019 through a unanimous vote that a six month period is appropriate.

To provide this window, the Loan Charge would need to be delayed. This is the right thing to do. If Sir Amyas deems a longer time period to be necessary, then he must be allowed this.

Biased and misleading narrative introducing the Terms of Reference

The Introduction to the Terms of Reference appears to prejudge the reasons why people entered the arrangements using emotive terms such as “disguised remuneration” and “contrived tax avoidance schemes”. It says that “tax avoidance behaviour” is unfair to others, thus presenting the government’s opinions as fact. Once again this suggests that the Treasury are intending to control the review and start from a position that they are right, which is unacceptable and worrying. The Terms of Reference of an independent review should not seek to prejudice the review, which is what the introduction written by the Treasury is clearly seeking to do. Sir Amyas must reject this and start from the premise of looking at the Loan Charge fully and properly, not being influenced by the Government’s position or any other position.

Summary

In summary, the APPG is calling for the following steps to ensure the review is both genuine and genuinely independent:

1. The Secretariat must not be staffed by (any) HMRC and Treasury officials. Sir Amyas must recruit and appoint the review staff, none of whom can be current HMRC or Treasury staff or have worked for either in the last five years.

2. The review must include a call for evidence, including from those individuals facing the Loan Charge and sector professionals. The review and report must be based on this evidence.

   We note that there has now been an announcement by Sir Amyas that he will take evidence, which we welcome.

3. HMRC and the Treasury should and must supply their view to the review, but have no other role. Key to the review is looking at the introduction of the Loan Charge by the Treasury (on the suggestion of HMRC) and the conduct of HMRC officials, Treasury officials and Ministers.

4. HMRC and the Treasury must have no input into the report at any stage nor sight of it until it is published by Sir Amyas and his independent review team. This needs to be clearly stated now or people will simply not have confidence that the report is not going to be influenced, controlled or largely determined by HMRC and the Treasury.

5. All Loan Charge related settlement activity, enforcement (including APNs) and penalties must be suspended pending the outcome of the review and the implementation of the recommendations.

6. If the review finds that the timescale suggested is insufficient, then Sir Amyas must be allowed to propose a longer time period to continue and complete a proper, and thorough, review.

Furthermore, the Loan Charge and associated activity must continue to be suspended for the duration of any extension.

7. The Government must commit to implement the recommendations of the Loan Charge review in full and in a timely manner taking into account the timescales impacting those facing the Loan Charge.

We look forward to your reply.

Yours sincerely,

Sir Ed Davey Chair	Ruth Cadbury Vice Chair	Ross Thomson Vice Chair

On behalf of the Loan Charge APPG