



All-Party Parliamentary Loan Charge Group

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

18th August 2020

Dear Chancellor,

Genuine and reasonable settlement opportunity for those who used loan schemes

Following the passing of this year's Finance Bill, and with the current requirement to declare the Loan Charge at the end of September, we are writing to implore you to instruct HMRC to offer a genuine, fair settlement opportunity which would allow many people to reach affordable settlement and also allow HMRC to collect some of the tax it claims it is owed (even though, as you know, this has never been legally proven).

We are writing to suggest such a settlement proposal and also to urge **a delay of the Loan Charge declaration from the end of September 2020 to the end of January 2021**, to allow a reasonable period of time for settlements to be agreed.

Despite the misleading impression regularly given, the reality of the current so-called "settlement terms" being offered by HMRC is that they are grossly unfair and punitive, rather than being about reaching a reasonable and fair agreement that enables people to pay an affordable amount both in total and in terms of monthly payments. The payment terms that HMRC are insisting on are often far harsher than those imposed on people guilty of criminal offences such as fraud and theft which, as has been raised before, is indicative of the vindictive way those facing the Loan Charge are treated.

The current terms involve penalties and interest (often accumulated over lengthy periods and charged even when HMRC failed to respond in a timely manner). In some cases the terms include Inheritance Tax on the loans which of course contradicts HMRC and the Treasury's claims that the loans are being treated as income. Overall people are being asked to pay sums far in excess of the disputed tax amount and far in excess of any financial benefit gained by using the loan arrangements. This is not only very unfair to the taxpayer, but it also ignores the large sums deducted by those who promoted and operated schemes and who are not being asked to pay any of the disputed tax.

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Worse still, to enter a settlement with HMRC over loan schemes, individuals are forced to declare wrongdoing and to state that they knew they had avoided tax, when for many people this is simply not the case. It is grossly unfair to force individuals to admit they have intentionally avoided paying tax and that they knew they were doing so. It has never been legally proven that this is the case, yet these individuals have been denied the right to defend themselves in court – a right which is afforded to all other taxpayers. Settlements should be about HMRC seeking to reclaim some of the disputed tax it believes is owed, not about forcing individuals to admit guilt and knowledge of wrongdoing at the time, even when this is actually not true.

Compounding this issue, entering a settlement with HMRC on the current terms does not give individuals finality. HMRC make clear that they reserve the right to seek more from individuals in the future. This is wrong.

It is hugely unfair that individuals are being asked to pay all the tax that HMRC thinks was avoided, when scheme operators/promoters took a percentage (often around 15%) and client employers benefited from not having to pay employer's NI. HMRC should also accept some culpability through their failure to act in closing these schemes earlier.

We are therefore writing to propose a fair, reasonable and affordable settlement opportunity that taxpayers could enter into without admitting wrongdoing and which represents full and final settlement of all obligations under the Loan Charge or open enquiries/assessments. This would not only remove the nightmare and reduce the very real risk of self-harm and mental breakdown for many people, but it would also give HMRC a far better chance of concluding settlements and bringing in disputed tax revenue, rather than resulting in many bankruptcies.

A genuine, fair, affordable settlement proposal

We have laid out the settlement proposal in the attached document, but to briefly explain it gives all users of what HMRC terms "disguised remuneration" loan schemes the opportunity to agree a settlement on the basis of paying an Income Tax rate of 10% that is applicable to:

- a. All loans received via a contractor loan arrangement from 6th April 1999 to 8th December 2010 (inclusive), where HMRC has protected the tax year in question, and;
- b. All loans received via a contractor loan arrangement on or after 9th December 2010 to the effective date of settlement, for both protected and unprotected years.

Interest would still be payable but only up to the date that the taxpayer registered their initial interest in settling with HMRC, to ensure the taxpayer is not penalised for delays on the part of HMRC. Forward interest and inheritance tax would also be removed.

This proposal acknowledges the reality of who actually benefited from the loan arrangements and acknowledges that it is wrong to be demanding all the disputed tax from individuals. It takes into account that most of the benefit was received in the form of fees taken by those who recommended, promoted and operated the schemes. It works on the principle that individual

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taxpayers should pay a proportion of the disputed tax, acknowledging that they did benefit.

However, it also recognises that any benefit should be compared to the returns of someone working through a limited/personal service company and not with an employee (as they were not an employee and did not receive pension contributions, sickness or other employee benefits).

The 10% rate recognises four key parties in the transaction: the employee (taxpayer), the employer (promoter/scheme operator), the end-client and HMRC.

Assuming a loan of £50,000 the calculations could be represented as follows:

- (a) The employee (taxpayer) benefited to the tune of c.5% saving on their annual tax bill: c.£2,500
- (b) The employer (scheme operator) typically realised a 15% fee, characterised as “tax and fees” to the employee: £7,500.
- (c) The end-client was afforded the opportunity to save employers national insurance contributions, typically between 12-14% over the period: £6,000-£7,000.
- (d) HMRC of course did not benefit from the arrangement, however, in not acting to close down loan schemes and communicating with people that such arrangements were not acceptable, HMRC most definitely were at fault. Furthermore HMRC failed to open (protect) many tax years for which they are still seeking to demand disputed tax (the Loan Charge was introduced to address this failure and to change the law to allow a second bite of the cherry, where they previously had missed their chance to do so). In their report published on 4th December 2018, the House of Lords Economic Affairs Sub-Committee found that there were “*unreasonable delays in legislating and in failing to progress those enquiries which were opened into individuals’ tax affairs, depriving them of certainty even in situations where they were actively seeking to engage with HMRC to finalise matters*”. It is therefore equitable that HMRC should accept apportionment of culpability.

We still believe that the retrospective nature of the Loan Charge is entirely wrong and that everyone should be allowed to defend themselves in a tax tribunal, as other taxpayers have the right to do. However, we believe that this settlement opportunity proposal provides a fair resolution to the whole issue and, for those who wish to do so, a means to end the Loan Charge scandal.

We are aware that some individuals have already settled on the current terms. In many cases settlement was agreed under duress from the threat of the Loan Charge and far greater bills. This must not be used as a reason for not offering a fair resolution now. People who have already settled should also, in fairness, be allowed the chance to renegotiate their settlement figures on the basis of the new proposal. Where time to pay plans are already in place, this could be done by simply reducing the total still outstanding rather than revising payments already made.

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The proposed settlement opportunity would be a small price to pay for a fair and final resolution to the whole issue of the Loan Charge, avoiding many bankruptcies and making it far less likely that any more people will take their own lives as a result the demands from HMRC.

Need for a delay from September 2020 to January 2021 for the Loan Charge declaration

In addition to the Settlement Proposal, which is explained in much greater detail on the attached document, we are also calling on you to move the date of the declaration of the Loan Charge from 30 September 2020 to 31 January 2021. This would not only allow for a six month period in which people could set up such settlement arrangements with HMRC, but it would also give HMRC a realistic chance of completing the settlement processes, something that at the moment, they simply do not have the time or resource to do.

There are several reasons why this is both essential and also sensible, including for HMRC:

1. **HMRC have only completed approximately 10,000 settlements in 3 years yet they need to finalise three times as many as that before the end of September.** In addition, HMRC resource has rightly been focused on dealing with the Covid crisis and are more stretched than ever. Every individual engaged in the settlement process has the right to have their settlement fully and properly conducted before being hit by the Loan Charge. It is clear that there is very little chance of HMRC completing all settlements before the end of September, meaning a delay is essential.
2. We understand that **HMRC staff have been told to expect to be working from home, potentially for months to come.** This creates a real difficulty in people ensuring that their settlement figures are correct. By means of an example, individuals are exercising their right to make Subject Access Requests for the evidence that certain years are open (protected). However, many have received replies stating that the paper version of such enquiry notices (which HMRC need to provide) are not available due to the fact that staff are not in the office. It is clearly unfair that individuals are having to settle on unconfirmed figures, and another reason why a delay is essential.
3. **The delay is also vital due to effect of the Covid-19 pandemic on business and the economy.** As HMRC knows, if the Loan Charge is imposed, as well as forcing individuals into bankruptcy, it will also close businesses (where company directors are facing the Loan Charge). This in turn will cause job losses. A sensible delay of 6 months to allow for settlements gives the opportunity to avoid much of this damage.

A delay is therefore clearly both sensible and needed, not only to allow HMRC the time to conduct settlements, and to do so properly, but also to allow sufficient time for the new settlement proposal to take effect.

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We have been advised by a tax lawyer that legislation is not needed for this change to come about, that HMRC have the discretion to implement it, and that you have the power to instruct them to use it, in this way, to offer such a settlement to all those who have used loan schemes.

We urge you to agree to delay the Loan Charge declaration date and to properly consider and then instruct HMRC to put in place a genuine, fair and affordable settlement opportunity along the lines of the one we have outlined.

The Loan Charge Scandal is not going to go away as a political issue or as a serious mental health crisis for thousands of individuals. Without such a settlement opportunity it is clear that many people simply will not pay the Loan Charge and many cannot do so. Doing nothing will mean individuals are at risk of bankruptcy, homelessness, breakdown and suicide.

We urge you to do the right thing and to announce a delay and genuine fair settlement opportunity to allow many people to settle and move on with their lives.

As well as having the support of the Loan Charge APPG, this proposal for a genuine, fair and affordable settlement and a six-month delay to allow settlements to be concluded is supported by the Loan Charge Action Group and by tax advisers and lawyers who have been advising the APPG.

Yours sincerely,



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Co-Chair



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