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Dear Mr Wilson, Mr Smith and Mr Yasin,

I have been asked to respond to your letter of 11 May 2023 to the Chancellor of the Exchequer about discovery assessments issued in respect of the Loan Charge, as these have been issued by HMRC's Customer Compliance Group.

Since the Loan Charge was announced in 2016, HMRC has been working with those affected to settle their affairs. While many customers have settled or paid the Loan Charge, others have not yet paid the tax they owe. Recognising the impact of the Loan Charge, particularly for those with large tax liabilities, we have carefully managed how we approach our compliance activities.

Individual customers with Loan Charge liabilities needed to declare them in their 2018-19 Self-Assessment tax returns. Following the Independent Loan Charge Review, HMRC announced that customers needing to declare the Loan Charge could defer sending their returns from the 31 January 2020 statutory deadline to 30 September 2020, without incurring late filing or late payment penalties. This was so they were not adversely affected by the timing of the Review.

There remains, however, a population of around 40,000 individuals who have not yet fully settled their liabilities with HMRC. These customers either did not declare the Loan Charge or included an incorrect Loan Charge amount on their return. For most customers with outstanding Loan Charge liabilities, we opened enquiries into their 2018-19 returns within a year of receiving their return. Where enquiries were not opened, we were able to issue discovery assessments, up to and including 5 April 2023, where we believed that individuals still had outstanding Loan Charge liabilities and where the relevant legal conditions were met.

Assessments were issued to a smaller number of individuals because we had opened enquiries for most. We also issued determinations to employers who should have paid the loan charge. These determinations also had a deadline 5 April 2023. We will pursue Loan Charge liabilities from employers in the first instance where they are required to pay the tax that is due. In some cases, we will collect the tax directly from the individual. This may include when the employer is offshore, or where we may need to use HMRC's usual PAYE powers to collect from the individual where it's not possible to collect the tax from their employer. We have issued assessments to some individuals whose employer should pay the tax in the first instance, because we may need to collect the tax from them directly, later. Income tax is ultimately the liability of the individual. Our approach puts these individuals in a comparable position to an individual who would, in the normal course of events, have their tax deducted from their earnings by their employer under PAYE and paid to HMRC.

HMRC issues discovery assessments as a normal part of our compliance work to enable us to recover any loss of tax from customers, not just those involved in avoidance. These assessments come with important safeguards, including appeal rights. To ensure the accompanying letters were as clear and understandable as they could be, we developed them in consultation with customer representative bodies, including the Low Incomes Tax Reform Group. These organisations published our letters on their websites, with our support, to ensure that customers had advance notice before we issued them.

The discovery assessment letter also provides information for customers who are concerned about paying the tax that is due. HMRC can agree an affordable and sustainable instalment plan based on customers' specific circumstances and for as long as they need. We can also refer customers for free debt advice that is independent from HMRC. Individuals can do this whether or not they have exercised their right to appeal the assessment.

HMRC recognises that tax burdens can add significant pressures and that some customers need extra help because of their individual needs or circumstances. We are committed to identifying and supporting customers who need extra help with their tax affairs. We have guidance and training in place for our staff on how to identify customers who need extra support, a dedicated telephone line for those seeking to exit a tax avoidance scheme and a debt helpline. Where appropriate, we will signpost any customers in vulnerable circumstances to specialist emotional support through a dedicated Samaritans helpline, initially being run as a pilot. Samaritans' volunteers are trained to listen and provide emotional support when someone is going through a difficult time.

We will never compel an individual to sell their main home to pay their Loan Charge liabilities and to date, HMRC has not initiated insolvency proceedings against any customers solely for a Loan Charge debt.

Any loss of life is a tragedy, and HMRC takes issues relating to loss of life or serious injury extremely seriously. If we become aware that a person has taken their life or suffered serious injury, and there has been contact with HMRC, an independent team will consider the circumstances of the case. If the team finds any indication that the contact with HMRC may have contributed to the death or serious injury, we will refer the case to the relevant external oversight body The Independent Office for Police Conduct (IOPC) in England and Wales and the Police Information Review Commissioner (PIRC) in Scotland).

The Loan Charge assessments include late payment interest. We charge late payment interest daily on tax paid late, from the date the tax was originally due until the date it's paid. The application of interest is designed to deliver fairness for all by ensuring those paying their tax late do not get an unfair financial advantage over those paying on time. The interest we charge and how we charge it is set out in legislation. Customers can choose to make a payment towards tax owed and doing so will stop more interest building up on that amount.

You also raise a concern about the work HMRC is doing to tackle those involved in operating avoidance schemes. We take a wide-ranging approach to tackling promoters and the individuals and entities that support them. This goes beyond enforcing the obligations under the anti-avoidance regimes. It includes enquiries into the income tax, corporation tax and VAT of promoters and related entities.

New policy measures enacted in Finance Acts 2021 and 2022 are helping us to take action more quickly and apply sanctions at an earlier stage. These powers also allow HMRC to publish details of promoters of tax avoidance schemes, and others involved in the implementation and operation of such schemes. In some circumstances this includes the director(s) of companies that we suspect are promoting tax avoidance. As of 31 March 2023, HMRC has published details of 27 promoters and 31 schemes to help customers steer clear of tax avoidance schemes.

Furthermore, as announced at Spring Budget 2023, the Government has recently launched a consultation on two further measures to tackle promoters of tax avoidance, which build on the changes made in recent Finance Acts. The consultation covers proposals for a new criminal offence and expediting disqualification of directors of companies promoting tax avoidance. These proposals reinforce the Government's commitment to ensure promoters face tough consequences for their actions.

I hope you find this reply helpful.

Yours sincerely

Mary Aiston

MARY AISTON
DIRECTOR