Loan Charge All Party Parliamentary Group

Response to HM Treasury “Report on time limits and the charge on disguised remuneration loans”

Introduction

The report published by the Treasury today on the Loan Charge is the expected cynical whitewash and is not a review at all. This confirms that the Treasury have acted in bad faith for refusing to conduct a genuine review into the controversial policy and have instead merely published an updated version of the same misleading documents that have been already circulated to MPs and journalists.

In January, the Government was forced to accept a cross-party amendment by Loan Charge APPG Chair, Sir Ed Davey MP. MPs and peers had understood that this would lead to a review of the Loan Charge. However the Loan Charge APPG were then told, in writing and in a meeting, that there would be no such review. The Treasury would merely publish a report ruling out any changes to the controversial Loan Charge, despite the risk to health and wellbeing faced by thousands of people. That is what has happened, yet with additional material to seek to justify the policy and to cover up the failures of HMRC.

The ‘report’ is merely an extended rehashed version of the same propaganda previously issued by HMRC and the Treasury. There is nothing new in it. The review that was expected by the House of Commons has not been conducted in good faith. This report merely reiterates the previous position.

Key points

- The very start of the report states "DR schemes are a clear example of some of the most contrived avoidance within the tax system." This is a blatant attempt to colour the reader’s mind for what comes after. The evidence sent to the APPG’s Loan Charge Inquiry is that tax avoidance was not the prime motivation for these schemes and shows that the use of these arrangements accelerated year after year as HMRC took inadequate action to either change the law or to establish a wide-ranging precedent in court for HMRC's flawed interpretation of the law.

- It is clear that no one has critically examined HMRC's assertions. The report has been written by HMRC and the Treasury working hand in glove. This shows that there is no genuine oversight of HMRC with regard to this issue.

- The report talks throughout about the government and HMRC’s “views”, “strong views”, “belief”. None of this though is anything other than opinion that would require testing in court to determine if it is correct.

- **No new evidence was sought by HMRC or the Treasury from any outside party. The evidence submitted by the APPG has been disregarded for spurious reasons. The entire body of 70 cases submitted by the APPG has been dismissed with the simple comment "HMRC does not accept the claims".**

- The genuine anguish and turmoil being suffered by taxpayers impacted by the Loan Charge has been dismissed by referring to the small proportion of the UK population impacted by this matter. The APPG cannot understand how the relative size is relevant at all. In what other area of government policy would the fact that only 50,000 to 100,000 people are affected be an excuse for inaction?

- In our letter to Sir Jon Thomson on 11th March 2019, the Loan Charge APPG added our voice to calls from other MPs for an HMRC funded 24-hour mental health helpline to ensure that people facing the Loan Charge (and Accelerated Payment Notices) have access to proper counselling twenty-four hours a day. The sentiments expressed in this report, immediately following the acknowledgment of mental health concerns that “HMRC is committed to supporting all its customers to help them comply with their tax obligations”, does nothing to reassure us that HMRC value anything above collecting revenue. The only real new action noted in this report to address the mental health issues is that HMRC will extend their current “Needs Enhanced Support Service”. This is totally inadequate.

- The £3.2bn figure that has been widely quoted by HMRC and Treasury as the revenue to be raised by the Loan Charge now appears to have become a figure that will be raised from a package of measures announced at the same time and to be implemented over a five-year period. So, how much is actually from the Loan Charge?

- Sir Jonathan Thompson, Chief Executive and Director General of HMRC, previously told the Treasury Select Committee that this was about people taking income and "washing it through a Caribbean trust", or questioning if “there was a legitimate reason for having that loan from the Cayman Islands”. These exotic locations appear to have now been dropped in favour of "Cyprus, Malta, and the Isle of Man".

- "[The government] has been consistently clear there is no intention to change the relevant legislation." This appears to disregard the very clearly stated views of MPs who called for a genuine review at the time that the New Clause was enacted. We would argue that this is going against the intention of Parliament.

- Section 3.85 states, "Some have asked that the charge is restricted only to DR loans entered into after 2011 or 2017. The government believes this would be unfair to ordinary taxpayers as it would mean enquiries for earlier years would continue to have to be pursued through the courts or would allow some people to continue to benefit from highly contrived tax avoidance."

    - This is an admission that the Loan Charge removes the need to litigate through the courts. Thus it deprives the taxpayers of their rights to appeal HMRC’s opinions to an independent body.

- Section 3.95 states, "If someone wants to settle only for years for which an assessment has been made or an enquiry has been opened, they can do so without the benefit of the concessions included in the published settlement terms. Where they do not settle a year for which a loan is outstanding, they will have to pay the charge on DR loans for that year, unless the loan is repaid."

    - This is an admission that the Loan Charge also picks up tax years where HMRC are out of time to open an enquiry.

- In Section 3.119, it is stated that HMRC have only sent settlement figures to 15,649 people as of 15th March. We have been sent evidence to show that people are still only just now receiving letters from HMRC informing them about the Loan Charge. So it is hardly surprising that so few people have enquired about settlement or have sent in the details that HMRC demand.
- 3.121 - (quote) "... the settlement terms treat the loans as income in the year they are made."
  - Despite elsewhere in the report claiming that court rulings support HMRC's opinions, the above tax treatment is NOT supported by court rulings. Previously HMRC and the Treasury have attempted to paint a picture that PAYE rules allow any tax liability found to have been incurred by the employer under PAYE rules (relating to payments from an employer into a trust) as being easily transferrable to the employee. Section 3.121 shows that the settlement terms are based on a completely different analysis which boils down to "the loans were not really loans, they were actually income". This is not what the courts have ruled. The report shows that the Treasury and HMRC are ignoring the courts and misrepresenting court outcomes to justify the Loan Charge.
- B32 - "The DR provisions do not introduce any new assessing time limits so the time limits of 4 years (reasonable care), 6 years (careless), 12 years (offshore) or 20 years (deliberate) will apply in respect of the new charge which starts on 5 April 2019." This is in stark contrast to evidence from experts such as Ray McCann, President of Chartered Institute of Taxation, to the Treasury Select Committee on 10th December 2018:

  > "I have described [the Loan Charge] as worse than retrospective legislation, because it displaces all the protections that Parliament has put in place. Those protections will or won't be available to the taxpayer, depending on the behaviour, but it would be rare to see very many of the individuals involved in this as capable of being accused by HMRC of having deliberately evaded tax, which gives the Revenue the longest period — the 20 years."

Consultation with the Loan Charge APPG

After the passage of New Clause 26 into the Finance Bill on 8th January, Sir Ed Davey asked a Question to the Prime Minister the following day, 9th January. Sir Ed asked for the Prime Minister to meet a cross-party delegation. By the time of the meeting, on 31st January, the Loan Charge APPG had been formed.

This led to a meeting was between Sir Ed, Ruth Cadbury MP, Ross Thomson MP, Stephen Lloyd MP, the Chancellor and the Financial Secretary to the Treasury, Mel Stride MP and HMRC officers.

The APPG asked that our Inquiry be considered as part of the external evidence that would be considered as part of the review. We discovered that there was no external evidence being taken and that there was no genuine review. Nevertheless we still sent information to the Treasury and HMRC as agreed.

- The APPG sent preliminary recommendations to HMRC and the Treasury – no response was received nor was any discussion sought.
- The APPG sent details of cases with the agreement of taxpayers along with a letter setting out how these could be used – no response was received from HMRC.

The Loan Charge APPG also invited Mel Stride and HMRC to take part in an oral evidence session of the APPG's Loan Charge Inquiry. Both declined to attend.

The Loan Charge APPG still wished to properly engage with the Treasury in a proper review of the policy and met with HMRC Officers, a Treasury Civil servant and the Chancellor's Special Adviser.

It was as that meeting it became clear that there was no review: the Chancellor's Special Adviser actually said, "It's not a review, it's a report", and all the HMRC officers present did was repeat the usual 'lines' and not answer questions properly. They also made clear that the Loan Charge would be unchanged as a result of the report.

Dishonest statement regarding the APPG submission of cases to HMRC

At the meeting on 31st January, a request was made to the APPG to provide personal submissions sent to the Loan Inquiry to HMRC. The APPG members agreed to provide these (subject of course to taxpayers giving their permission).

The Loan Charge APPG provided these on 8th March along with a cover letter to Ruth Stanier, Director of Counter Avoidance. The letter reiterated the commitment that the APPG had made and the terms of that commitment. No response was ever received to this letter. HMRC did not ask for any more information, nor was any information sent to the APPG about the cases as expected.

The APPG objects in the strongest possible terms to the accusation in the report that the "commitment was not sufficiently met". The APPG provided exactly what they committed to and gave access to some 70 individual taxpayer cases, giving HMRC the full submissions sent to the APPG. To suggest otherwise is a downright lie. It is HMRC who reneged on their commitment and who failed to give any commentary on any of these cases.

Conclusion

The 'report' issued by the Treasury is the expected whitewash but also a sham. It has merely rehashed the now considerably discredited material issued regularly by the Treasury and HMRC about the Loan Charge.

The Treasury have not even attempted to conduct any type of review of the legislation: they have purely sought to lay out their case for why it is justified, which is deeply cynical, and, we also believe, wholly unacceptable and irresponsible.

It is utterly reckless to ignore the real risks to people impacted by the Loan Charge – a risk which is now well documented, including the awful fact that there have been confirmed suicides of people facing the Loan Charge.

The Loan Charge APPG have called for an urgent delay to the Loan Charge and a proper, independent review into the conduct of the Treasury and HMRC around this issue. The report published today demonstrates that the Treasury and HMRC cannot be trusted over this issue and are evading proper scrutiny and accountability. The need for an independent review is now pressing.

We believe this is now urgent and that the report published today shows that the Treasury are behaving recklessly and ignoring the serious risks to people if they push ahead with the Loan Charge amended. We again call for a delay.

Loan Charge APPG
26th March 2019