



**All-Party Parliamentary Loan Charge
Group**
www.loanchargeappg.co.uk

Information on the percentage Employers have paid of the money presented as due as a result of the Loan Charge

November 2019

This document was researched and written by the Loan Charge APPG. The Loan Charge APPG Secretariat is staffed and funded by the Loan Charge Action Group.

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Introduction

HMRC has frequently indicated that the Disguised Remuneration Policy (also confusingly and inaccurately referred to as the Loan Charge Policy Package) is expected to raise £3.2 billion; HMRC state¹ that they expect 75% to come from “employers” and 25% from “individuals”. They note that “employers” had already paid 85% of the revenue collected via settlements to date.

No information has been provided on the composition of these figures and HMRC has repeatedly failed to clarify this when asked – that is, either through written requests by the APPG or formal Freedom of Information requests by individual taxpayers.

However, it is surely beyond doubt that publication of the detailed figures, with appropriate clarification on the composition of those same figures, would assist in addressing the concerns we express.

We believe that the lack of information (or indeed clarity on that information) has resulted in additional stress on the taxpayers affected by the measures. Although this information may be factually accurate, the absence of detailed analysis leaves the data open to misinterpretation and misunderstanding. It is not known whether this lack of detail or clarity on the figures has been deliberate.

Parliamentarians, journalists and the public have been led to believe that the vast majority of the money from the Loan Charge will come from those who engaged the thousands of individual contractors. That is the umbrella companies, promoters of loan schemes, agencies or client organisations and companies for whom the contractor was actually working. The reality is that very little has come from those who engaged or ‘employed’ because it is legally impossible for HMRC to pursue these people, something that has been admitted now by Treasury Minister Jesse Norman², it also ignores the many small business owners impacted.

By deliberately conflating the Loan Charge and wider Disguised Remuneration, it gives a false impression of the revenue expected directly from the Loan Charge – and a false impression that companies are bearing the brunt of this total, which is not the case.

¹ <https://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans>

² In evidence to the House of Lords’ Economic Affairs Committee on 16th July 2019, Jesse Norman said “But the difficulty is that in law, not allowing any retrospectively law, it is hard to go after these people.” <https://parliamentlive.tv/Event/Index/66c8a940-4d21-4266-9331-63ee985273d6>

Loan Charge legislation and the Disguised Remuneration Project

The Loan Charge proposals within the Disguised Remuneration Policy were announced in a technical note³ issued on 16 March 2016.

From the outset, the policy has been “sold” to the Treasury, MPs and taxpayers on the basis of the revenue which the measure was intended to raise. The initial justification within the technical note was that:

“The government is also committed to ensuring that those who have used these schemes in the past aren’t allowed to get away with it.”

This phrase and HMRC’s skewed perception of fairness is a recurring feature of HMRC and Treasury justifications for the Disguised Remuneration Policy, along with the use of the Loan Charge within the approach to implementing that policy. This justification strikes at the very heart of our concerns on behalf of taxpayers because they are to the cost of the rule of law.

This cost is very real:

1. Loss of taxpayer rights and time limits for making enquiries;
2. HMRC already had existing powers to recover the tax at risk and therefore, the Loan Charge was not required - something which was not made clear to MPs;
3. The Loan Charge has been used to coerce taxpayers into agreeing settlement terms;
4. The penal nature of the Loan Charge has allowed to HMRC to impose harsh settlement terms;

and most importantly

5. Disregard for the human impact of the measures.

Regrettably, in spite of the concerns expressed by the APPG, it appears that Treasury ministers continue to justify the measures on the basis of revenue generated.

On 1st October 2019 during Oral Questions to the Treasury in Parliament, Jesse Norman, the Financial Secretary to the Treasury, responded to Peter Bone MP about the number of suicides caused by the Loan Charge:

“Let me also remind him that although these effects [suicides] have been much bruited, there is also the question of collecting the several billion pounds of back tax that is due.”

We are sure that with the benefit of hindsight, the Minister will regret the use of the word “bruited”; but there can be no doubt that his comments appear to reflect the prevailing view of the Treasury and HMRC that the generation of revenue is sufficient justification for the retaining the measures introduced and that suicide is an acceptable price to pay.

³ <https://www.gov.uk/government/publications/tackling-disguised-remuneration-avoidance-schemes-over-view-of-changes-and-technical-note/technical-note>

How the absence of detail on figures has misled

We have analysed the limited information provided by HMRC since June 2018 in relation to the number of settlements made by taxpayers and the estimated tax revenue arising thereon. The mean average figures have been calculated based on the information provided:

	Number of settlements	Revenue Generated	Overall Average Settlement (mean)	Average (mean) Settlement since last update
Sir Jonathon Thomson letter to Stephen Lloyd MP, June 2018	5,000	£500,000,000	£100,000	-
HMRC Update January 2019	6,000	£1,000,000,000	£166,667	£500,000
HMRC Annual Report March 2019	7,000	£1,500,000,000	£214,286	£500,000

Informed comment regarding these figures is not possible because additional information has not been provided by HMRC in spite of requests to do so by the APPG and through numerous taxpayer Freedom of Information requests.

Many people impacted by the Loan Charge were beneficiaries of contractor loan schemes. Therefore, based on the simplistic analysis provided by HMRC, many assumed that their employer would be paying 75% of the tax liability - particularly as the Glasgow Rangers case had established that the tax liability was the employer's. Most of the former employers of contractors are no longer in existence or cannot be contacted, so individuals were understandably at a loss to comprehend why they were being asked settle **all** of the tax liability arising on the outstanding loans.

Regrettably, this is a function of the lack of information provided on the estimated yield of £3.2 billion from the outset. Yet, it is clear that the information must have been available when the policy was announced in March 2016.

In spite of the fact that much of the media comment on the impact of the Disguised Remuneration Policy has focused on individuals, HMRC has continued to issue updates referring only in generic terms to employers and individuals. No attempt has been made to provide clarification or correct any misunderstandings on the part of the press or MPs on the composition of the revenue arising from the measures.

Trying to further interpret the figures

In the absence of clarification from HMRC, we have had to undertake our own analysis regarding HMRC's figures.

There are two distinct taxpayer groups facing the Loan Charge:

1. Small and Medium Businesses in the UK which implemented trust structures (in the main, Employee Benefit Trusts (EBT) and Employer-Financed Retirement Benefits Scheme (EFRBS))
2. Individual contractors who were in payroll loan schemes.

HMRC is correct that liabilities in the first case, if proven to be payable, are due by the employer. If the employer is unable to settle these liabilities, they can be transferred to employees under existing legislation providing certain conditions are met - thus meaning that **there is no requirement for the Loan Charge**. The Loan Charge legislation means that HMRC does not have to satisfy the existing conditions set down by law in order to recover the liabilities from individuals.

It is thus apparent there are four sources of tax revenue from the policy:

1. In cases where the employer is still trading or has sufficient assets, Small and Medium Businesses in the UK which implemented trust structures (in the main, Employee Benefit Trusts (EBT) and Employer-Financed Retirement Benefits Scheme (EFRBS))
2. In cases where the employer is not still trading or has insufficient assets, beneficiaries of the above awards, which will largely be directors and a small number of key employees.
3. In cases where the employer is still trading or has sufficient assets, Employers of payroll loan schemes.
4. In cases where the employer is not still trading or has insufficient assets, employees, more commonly referred to as contractors.

It's not clear why HMRC has never taken the opportunity to provide further information on the different groups of taxpayers affected by the Disguised Remuneration Policy. The impression which has always been given is that the tax liabilities would be payable by large corporates with little or no human impact. **Clearly this is not the case.**

The only analysis provided by HMRC is that 75% of the yield is estimated to come from employers and 25% from individuals. Most, if not all, employers of payroll schemes no longer trade or have no assets; this means that **almost all of the yield in relation "employers" will likely derive from owner-managed small and medium businesses – that is £2.4 billion.**

By referring to these as "employers" this leads MPs to assume they mean end clients, promoters or agencies, when they are not. Throughout the history of the Loan Charge,

HMRC have consistently presented things in a way that gives a partial and misleading picture and this is another example.

Furthermore, it is simply not possible to determine the allocation of the estimated yield attributable to individuals. Our understanding is that there is a sizeable minority of Small and Medium Businesses which implemented trust structures which are no longer in existence - the individual beneficiaries of those awards will therefore be included in the yield from individuals. **Together these account for the remaining £800 million.**

However, it is inconceivable that HMRC would not have access to the above information. Similarly, it's inconceivable that senior HMRC officials would not have been able to share this information with the Treasury Select Committee or the House of Lords Economic Affairs Committee to assist them in their enquiries.

We have already noted that the impression which has been given by HMRC is that tax liabilities would be payable by large corporates and we have demonstrated that this is not the case. In reality, the bulk of the estimated yield of £3.2 billion will actually be funded by individuals. This is because it will either be paid:

- directly by individuals or,
- by companies who, under tax legislation, are settling liability on behalf of an individual. To prevent an additional tax charge on the company (tax on the tax), the individual beneficiary needs to "make good" the liability by paying this money to the company.

It is the individual who pays regardless.

There is a further issue regarding the estimated yield. It can be no accident that the estimated yield of £3.2 billion has not been analysed between settlements and the Loan Charge. It has been suggested to us that due to the penal nature of the Loan Charge, it was always anticipated by HMRC that taxpayers, whether corporate or individuals, would settle; the Loan Charge in effect being a blunt tool to force taxpayers to do so. This certainly accords with the experience of many of the individuals who have come forward to express concerns.

HMRC are very reticent to explain the figures or breakdown who will bear the brunt of the Loan Charge, refusing to share more information about them. Sir Jonathon Thompson, then CEO of HMRC, has not responded to these questions when asked in a letter from the Loan Charge APPG⁴ on 2nd April 2019:

14. What proportion of the 85% of the payments already paid, that HMRC refers to, have been:

- a. payments from employers into EBTs, and;**
- b. payroll loans to contractors and freelance workers?**

⁴ http://www.loanchargeappg.co.uk/wp-content/uploads/2019/04/2019_04_02-Letter-from-LC-APPG-letter-to-SJT-re-campaign-of-misinformation.pdf

15 How do you define 'employers' and do you include small limited companies and Personal Service Companies run by contractors/freelance workers?

Why We are Concerned – the real target of the loan charge

HMRC's vague figures are symptomatic of the approach taken by them since 16 March 2016 to justify the Disguised Remuneration Policy or more specifically, the use of the Loan Charge within that policy to coerce taxpayers into settlements.

The lack of detail given by HMRC makes it almost impossible for stakeholders to interpret the limited information which is made available and is most certainly not in the public interest.

This has caused taxpayers considerable distress – the absence of direct answers to direct questions on the part of HMRC needs to be addressed as this is a pattern which has been a feature of HMRC's approach to questions put by MPs, taxpayers and tax advisers since the Loan Charge legislation was announced.

Responses given by HMRC in various Parliamentary committees and information requests are capable of misinterpretation or misleading by omission. MPs questioning HMRC officials cannot be expected to have a detailed understanding of tax law. Therefore, MPs must rely on civil servants to provide full and complete responses. It is not unreasonable to suggest that HMRC responses are designed purely to support the Loan Charge or action taken by HMRC officers.

HMRC and the Treasury have consistently given the impression that the Rangers Supreme Court case allows them to demand tax from individual contractors. This is a false part of HMRC's presentation of the Loan Charge, cherry picking the Rangers decision and taking it out of context to produce a result that their Lordships did not intend. HMRC's presentation includes saying things such as "the tax was always due" when the legal reality is that it took HMRC until 2017 to prove that.

This deliberate misrepresentation is covered in Section Four of our Loan Charge Inquiry report⁵.

Meanwhile end clients of individual contractors (which includes HMRC, other Government departments and Councils, as well as many large firms) are not liable for a penny from the Loan Charge, neither are promoters. The government has confirmed that they will not retrospectively chase these groups.

It is clear that the Loan Charge is a ploy to allow HMRC to pursue individuals and small business owners - it is not aimed at those who employed such individuals or who promoted loan schemes. **The reality is that the loan charge targets individual contractors which exposes the mistruth that it falls predominantly on "employers".**

⁵ <http://www.loanchargeappg.co.uk/wp-content/uploads/2019/05/Loan-Charge-Inquiry-Report-April-2019-FINAL.pdf>

The Loan Charge legislation was never required

It has previously been highlighted that the Loan Charge legislation was never required. HMRC already had existing powers to recover tax from employers and, as appropriate, individuals.

The experience of the Glasgow Rangers Supreme Court case has proved this. It allowed HMRC to issue Follower Notices to employers that implemented EBT and trust structures prior to 5 April 2011 but they failed to do so in many cases. As HMRC has not released any information on the composition of settlements, it is not known how much of the estimated yield from the Disguised Remuneration Policy derives directly from the companies affected by the Glasgow Rangers case.

Pre-2011 schemes are referenced here as HMRC has never taken a post-2011 scheme through the courts. HMRC could have taken a post-2011 case similar to Rangers and, if successful, been able to issue Follower Notices to both employers and contractors.

As a result, it is clear that the Loan Charge legislation was never required. Similarly, it is wrong to justify the implementation of this legislation on the basis of the revenue which would be generated under the Disguised Remuneration Policy.

The above clearly demonstrates that it would have been possible to generate the same or a similar yield without compromising the rights of taxpayers or putting lives in danger.

There will be many reasons why HMRC have chosen not to follow this course of action. HMRC's inaction must be at the centre of any questioning into why the Loan Charge legislation was introduced.

Conclusions

It is clear from examination of the figures from HMRC and the Treasury that:

1. It is simply not possible to determine the allocation of the estimated yield between settlements and the loan charge;
2. The significant majority of the £3.2 billion expected yield figure is not due to the Loan Charge, but as a result of the Glasgow Rangers Supreme Court case decision and the wider Disguised Remuneration project;
3. There has been consistent and deliberate conflation of the Loan Charge and the wider Disguised Remuneration Project - along with a misrepresentation of the result of the Rangers Supreme court decision;
4. Those who engaged individual contractors using loan schemes (end clients, agencies, umbrella companies and promoters) are not liable to the loan charge and so are not paying anything;
5. The "employers" quoted by HMRC as paying a large share of the money to be obtained are not employers of contractors;

6. HMRC and the Treasury have given the false impression that the Loan Charge falls mainly on large firms and others who engaged contractors, when this is the opposite of the reality;
7. The majority of money predicted to come directly from the Loan Charge will come from individual contractors and small business owners;
8. An employer has a duty to reclaim any tax paid from the employee, so **the individual will pay regardless.**

Many thousands of people are facing life-ruining bills, some have already sold homes and many more will be forced to and many will have no choice but to go bankrupt (and others will be made bankrupt). Seven lives have been lost from people facing the Loan Charge.

This is the cost for a relatively small return, not the £3.2 billion presented as justification by HMRC and the Treasury.

Notwithstanding the issues of the rule of law and the unfairness of the Loan Charge, the devastation to thousands of people and their families is not worth this sum of money (and even then it is highly unlikely that the Loan Charge will really raise these sums when so many people are simply unable to pay and many people will be forced into bankruptcy).

We believe that such deliberate misinformation is unacceptable and, when done knowingly, is a clear breach of the Ministerial and Civil Service Codes.