



Treasury Committee

House of Commons, Committee Office, London SW1A 0AA
Website www.parliament.uk/treascom

Rt Hon Mel Stride MP
Financial Secretary to the Treasury
1 Horse Guards Road
SW1A 2HQ

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Dear Mel.

Disguised Remuneration Loan Charge and the HMRC Contractor Loan Settlement Opportunity

Members of the Treasury Committee have heard from many people deeply concerned about the Disguised Remuneration Loan Charge. They have approached us as our constituents or in response to Committee inquiries into tax avoidance and into the way in which HMRC conducts enquiries and resolves tax disputes. During those inquiries, we have discussed concerns about the loan charge in some depth with the Chartered Institute of Taxation and with HMRC. We also raised the issue with the Chancellor when he gave evidence to the Committee on Budget 2018.

As you know, there has been a lot of debate around the question of whether the loan charge is retrospective. Ministers and HMRC have explained to us that the loan charge legislation is technically not retrospective because it was introduced in Finance Act (No.2) Act 2017 and applies to the balance of loans still outstanding on 5 April 2019. But our examination of that issue has raised other questions about the related matter of the impact that the loan charge, together with HMRC's Contractor Loan Settlement Opportunity, has on taxpayer expectations of certainty.

It is, of course, right that HMRC should be resolute in its determination to put a stop to tax avoidance and ensure that everyone makes their fair contribution towards funding our public services. Many people signed up to loan schemes believing that the schemes could help them to avoid tax. But they should have been aware that loan schemes were not guaranteed to achieve that result, and they might have further tax to pay; HMRC might open enquiries, the Courts might find the schemes to be ineffective, and the government might act to close any perceived loopholes by legislation, including retrospective legislation. In short, they would have had no reasonable expectation of certainty over their tax affairs

until either the statutory time limits within which HMRC could open enquiries and raise assessments had expired or, if HMRC opened an enquiry, until their dispute with HMRC was resolved.

In an evidence session on 30 January 2019, HMRC told us that they have around 50,000 open cases involving loan schemes. They said that they hoped the Loan Charge would prompt people to take the opportunity to settle the tax due on disguised remuneration loans.

HMRC opened a Contractor Loan Settlement Opportunity for people who want to settle their tax affairs in advance of the loan charge coming into force in April 2019. This sets out standard terms on which HMRC is prepared to settle on the basis that the loans were taxable on the recipients as earned income or profits in the years in which they were received. An HMRC issue briefing published on 18 July 2018 says that the loan charge will not arise on outstanding loans “if the individual has agreed a settlement with HM Revenue and Customs (HMRC) under existing law before 5 April 2019.”

We now understand that HMRC’s Contractor Loan Settlement Opportunity requires people who want to settle their tax position before the loan charge takes effect to pay not only the tax that would be legally due if HMRC were to assess their loans as remuneration but also to make a “voluntary” payment. This payment (referred to as “voluntary restitution”) represents tax on earnings received in years where statutory tax assessment time limits have expired. HMRC refers to these years as “unprotected” years.

HMRC explained to us that they included the requirement to make voluntary restitution for unprotected years because of the loan charge:

“Why are we including them in the settlement offer? The point to bear in mind here is that the loan charge applies to all outstanding loans where people have not paid their tax. That is not dependent on the status of any enquiries or the status of assessments for previous years. When we were designing the settlement opportunity, we thought it was important to encourage taxpayers to settle all years where they have an outstanding loan to get them out of disguised remuneration so that they would not have to pay that loan charge.”

We asked HMRC whether it was usual for their settlement opportunities to require voluntary restitution. In their letter of 29 January 2019, they told us that voluntary restitution was a component of a post-EBT settlement opportunity made available to employers. But voluntary restitution of tax for unprotected years did not feature in earlier disguised remuneration settlement opportunities made available to individual users of schemes. We also note that voluntary restitution for unprotected years is not required in other HMRC settlement opportunities such as the Profit Diversion Compliance Facility recently opened for multinationals that have diverted profits out of the UK.

Committee members wanted to understand why there were cases where HMRC had not challenged the use of loan schemes and raised tax assessments at the right time. HMRC told us in their letter of 24 January 2019:

“While many thousands of enquiries were opened and assessments were made in time, we recognise that there will be cases where we have not opened enquiries or made discovery assessments in time for every year in which a person has used disguised remuneration avoidance. And HMRC may have missed opening enquiries into some cases where full and complete information about the scheme was provided to us.”

We asked HMRC why the tax code contains assessment time limits. They explained the rationale as follows:

“... we want people to have certainty and there are limits on the length of time you want people to be expected to keep information so taxpayers can be certain that, after a period of time has passed and they have not heard from HMRC and they have disclosed everything they should have disclosed to HMRC, they can dispose of their records and they can treat that year as complete. If anyone has acted carelessly or has deliberately made an inaccurate return, we can have extended time limits. Some of those extended time limits can go back twenty years but in those circumstances we have to demonstrate that the behaviour went along with the inaccuracy. They are useful for us from an administrative point of view because we can treat years as closed and they are useful for taxpayers in terms of the amount of information that they have to retain over long periods of time.”

Just as tax certainty is important for businesses that want to plan for investment and growth, tax certainty helps individuals plan for major life events such as setting up home, starting a family or preparing for retirement. Where an individual fully disclosed their use of a disguised remuneration loan scheme at the proper time and in the correct form on their tax return but heard nothing at all from HMRC, that individual might reasonably have believed that the loan scheme they used was effective and had reduced their tax liability as the promoter of the scheme claimed. Similarly, an individual who had been the subject of an HMRC enquiry and had settled with HMRC for all the tax that HMRC demanded might reasonably have concluded that their tax affairs were in order and they had put their use of a loan scheme behind them. It is concerning that the loan charge, as reflected in its influence on the Contractor Loan Settlement Opportunity, can undo the certainty to which people in these sets of circumstances might reasonably have considered themselves entitled. This is particularly the case where some are now asked to find life-changing sums of money.

The value of appropriate and proportionate safeguards to protect a taxpayer’s right to certainty is acknowledged in the new extended time limits for assessing undeclared offshore income and gains where the usual tax assessment time limits of four or six years have been increased to twelve years. The Government has explained that it requires an extended twelve year assessing time limit for offshore matters because it can take longer to establish the facts in these cases, for example when HMRC needs to obtain information from or with the help of an overseas tax authority. The government has nevertheless put in place taxpayer safeguards which mean that the extended time limits cannot be used if HMRC received the information necessary to identify the lost tax from another tax authority before the end of the normal four or six year time limit and HMRC could reasonably have assessed the tax before the expiry of that time limit.

Sir Edward Davey's amendment to the Finance (No.3) Bill requires a review that will include a comparison of the tax assessment time limits that apply where people have not paid tax on their offshore income or gains with the time limits that apply to the disguised remuneration loan charge. When you accepted Sir Edward Davey's amendment on behalf of the Government, you said that the Government remains committed to setting out "the rationale for their policies as well as their impact". The loan charge influenced HMRC's design of the Contractor Loan Settlement Opportunity, requiring the payment of tax that HMRC currently has no legal basis to assess. That legal basis is missing because of the operation of standard statutory time limits on HMRC's ability to raise tax assessments; it is not a question of whether disguised remuneration loans may be taxed as earnings. Those time limits protect taxpayer rights to certainty in their tax and financial affairs. I hope that your review will address concerns that the design of the loan charge, as shown by its effect on the terms of the Contractor Loan Settlement Opportunity, effectively by-passes those existing protections.

In the meantime, I would find it helpful if you would explain:

- why the Government did not include provisions similar to the safeguards for taxpayer certainty in the extended tax assessment time limits for offshore income and gains in the design of the loan charge;
- why the Government considered it appropriate to withdraw tax certainty from individuals who have made a full and complete disclosure to HMRC of their use of a loan scheme in the required form and at the proper time and subsequently either
 - heard nothing from HMRC so that they might reasonably conclude, with the expiry of enquiry and assessing time limits, that their tax affairs were in order and agreed by HMRC; or,
 - were subjected to an HMRC enquiry which was settled on terms agreed with HMRC whereby HMRC would collect all the tax and other duties that it considered itself entitled to in law but would not require payment of any tax which, at that point, it had no legal power to assess:
- what assessment the Government made of the impact of the loan charge on people in either of the two situations identified above. It would also be useful if you would provide a detailed justification of why you considered this particular effect of the loan charge a proportionate response to tax avoidance and how you balanced the aim of strengthening HMRC's powers to prevent tax avoidance against an individual's expectation of legal certainty.

Yours ever

Nicky Morgan

Rt Hon Nicky Morgan MP
Chair of the Treasury Committee