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Independent Loan Charge Review 2025

Call for Evidence

Joint response by the Chartered Institute of Taxation and the Low Incomes Tax Reform Group

1. Executive Summary

1.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.

1.2. The Low Incomes Tax Reform Group (LITRG) is part of the CIOT and have been working closely with TaxAid on loan charge issues since around 2018/19, when it became clear that some lower-paid agency workers that were put into loan arrangements by umbrella companies were affected by the loan charge. LITRG's efforts since then have focused on offering these workers practical support and assistance in terms of how to deal with the loan charge, rather than the policy per se.

1.3. Given the published parameters of the review, our response focuses on questions 5.4, 5.5 and 6.1 of the call for evidence and the various barriers preventing taxpayers from resolving their loan charge liabilities with HMRC – with a focus on lower-paid agency workers. We also explore some solutions that could remove or otherwise alleviate these barriers, but recognise that there may be other options that achieve similar results. We note that the terms of the review do not allow for changing the underlying legislation of the loan charge, but we think a meaningful impact could be achieved within the set parameters, particularly where several 'solutions' work together and where HMRC are fully empowered to take a flexible and proactive approach to embracing and operating them.

1.4. One of the overarching objectives of the review is to ensure fairness for all taxpayers. We recognise that achieving fairness can sometimes present tensions with other policy objectives. However, recommendations for resolving outstanding loan charge cases need to balance fairness between those that have already settled

with HMRC, and those that are yet to resolve matters. HMRC have to be both fair and consistent when administering the loan charge. The question arises, for example, if any solution leaves those who have been advised not to report and pay the loan charge in a better position than those who did report and pay the loan charge. There is a strong argument to say that fairness requires any changes as a result of the review to be applied to everyone subject to the loan charge, not just those who have not yet settled. Equally important is that the review's recommendations lead to all taxpayers having certainty about their position.

1.5. While the CIOT supports HMRC being able to tackle egregious tax avoidance, it is important that they understand the circumstances of what they are addressing, including who is affected by the loan charge and why the issues have arisen so that action taken is both proportionate and appropriate. A key underlying issue to address from the outset, is the lack of published evidence and information on the use of schemes, numbers of taxpayers involved and the breakdown of the groups affected, including how they entered such schemes. It is crucial to understand who used the schemes, over what period, and the reasons for using disguised remuneration (DR) loan arrangements. It is apparent that a very diverse population of taxpayers is affected by the loan charge.

1.6. We think it is important to fully understand the different barriers to resolution for different populations as they may not be the same. LITRG and TaxAid have drawn on their significant experience to illustrate the issues certain taxpayers face in resolving their loan charge liabilities with HMRC – summarised in Appendix 1 but considered throughout. This experience means we are well placed to speak to the barriers of this one group in particular. This is a group consisting of lower-paid agency workers who found themselves in a loan scheme because of the avoidance behaviour of their umbrella company engagers.

1.7. The barriers to resolving loan charge cases for this population fall roughly into four areas, which present issues in and of themselves, but also overlap and compound. We provide more detail on all of the contributory elements in the body of our response.

1) **Lack of information**. Many taxpayers did not have the insight or information to understand the arrangements they were put into, resulting in them not understanding that they had loan charge obligations to fulfil. Those in this category are more likely than not to be lower-paid taxpayers placed into umbrella type arrangements. Additionally, some did not have (or have not kept) payslips etc. to evidence what payments they did / did not receive. Their lack of insight and information also meant that they may have been unable to take advantage of the Morse recommendations which were intended to reduce the impact of the loan charge on some individuals. It certainly meant that they could not take advantage of the 2017 settlement terms, which could have kept them outside of the loan charge altogether.

2) **Self Assessment issues and other interactions**, for example around late filing and late payment penalties. Because of unhelpful and poorly targeted HMRC communications, some taxpayers were not aware they had 2018/19 filing obligations linked to the loan charge, and many of those that were aware, omitted accurate and complete loan amounts because they lacked information or understanding (see above). This has led to HMRC issuing assessments / determinations, some seemingly based on overestimation of loan amounts. This is because, for example, HMRC are extrapolating a year's worth of figures from data when in reality, agency workers will have moved around a lot and not been in schemes long. Some workers also have a section 222, ITEPA 2003 charge based on these faulty, underlying figures. Often workers do not have the evidence or insight to be able to understand or rebut HMRC calculations. The result is a never-ending amount of backwards and forwards between individuals and HMRC trying to get to the bottom of figures, agree them etc. All the while interest is accruing. In some

cases interest and penalties can significantly outweigh the tax due. We think it may now all be escalating even more quickly than the issues and interactions can be identified.

3) **HMRC's approach**. Although this may have softened slightly, at times HMRC have taken a seemingly rigid, one size fits all approach to the loan charge (perhaps because of its association with tax avoidance and assumptions as to the types of people involved); the legacy of this remains and can make resolution challenging. For example, HMRC's insistence that spreading elections were made through the online additional information form, which required a lot of detailed information about scheme 'usage'[1], meant that few eligible individuals actually made them in practice. They are now out of time to do so, with no indication that HMRC is routinely accepting late elections. Thinking slightly more widely, the pervasive language of 'users' in letters / guidance / communications is very charged and inflammatory – we have long asked that HMRC use a more neutral tone. Starting letters with the opening '*I am writing to you because I believe you've used a tax avoidance scheme*' (with no case officer name given) is alienating and confusing to workers who did not recognise themselves as being affected by the loan charge and do not recognise themselves as "tax avoiders".

4) **Trust in, and access to, HMRC's easements.** HMRC have committed, many times, to deal with people sensitively. They already have 'business as usual' debt recovery policies in place and have come up with several specific, potentially very helpful, easements to try and help people who have a loan charge amount to pay. For example, around 'no questions asked' payment arrangements, the section 222 charge and the residual tax concession. The problem is these are all negotiated / applied at the end of the settlement process, which people are not getting through to due to the barriers outlined above. So, in our experience, it has not been possible to test HMRC's approach to remissions / payment arrangements / not forcing people into bankruptcy and how they might be applying these in practice. However there is a lot of social media coverage of certain aspects of the loan charge which in some cases may be generating fear and uncertainty which outweighs all else. While we have only seen a small number of cases, and do not have clear evidence, the perception of harsh consequences—like bankruptcy or unaffordable repayments—appears to remain largely unaddressed. Without more proactive reassurance from HMRC, this fear continues to deter people from entering or progressing through the resolution process, further compounding procedural and escalation issues.

1.8. Although LITRG's focus has been on lower-paid agency workers affected by the loan charge, we also share below some thoughts around others who may have been affected by the loan charge and whose personal circumstances now mean settling the loan is very difficult, for example because they are now ill or retired or perhaps cash poor / asset rich. These people also face barriers – typically based on the scale of their liabilities (and because their arrangements were based on possibly slightly more sophisticated planning, they probably incorporate associated issues such as Inheritance Tax (IHT)). HMRC's inflexibility to accept voluntary legal charges on property or even sub-standard offers etc. are problematic in this context and something which could usefully be explored.

1.9. We consider that one step that could be taken is to improve processes on how the loan charge is calculated to maintain a consistent approach where actual information is not available, including the provision of up front information from HMRC on how assessments / determinations are calculated and if there is a reliable source from the scheme itself.

[1] https://www.litrg.org.uk/sites/default/files/AST8900.pdf

1.10. This could be followed by reconsideration of the interaction with Self Assessment processes to provide a more pragmatic and consistent approach to removing inflated debt elements, such as payments on account generated by a determination, allowing a way to address out of time determinations without requiring a Special Relief Claim, pro-active closure of the Self Assessment record and cancelling late filing penalties without requiring formal reasonable excuse appeals. Also, interest which has arisen because of HMRC delay, should be waived. More generally, consideration should be given to reducing or waiving interest where it is an inhibitor to resolution.

1.11. Then, most crucially, processes need to be put in place to deal with the agreed debt, especially around ability to pay, changes in circumstances, hardship, instalment payments, and remission of tax / sub-standard settlements.

1.12. To support smoother case progression going forward, all of this needs to be underpinned by a shift of approach by HMRC. HMRC have not always recognised, in their approach to resolving cases, that the reasons people ended up in loan schemes are varied. In order to apply discretion and manage cases in a way that ensures they can move forward, HMRC need to better understand the different groups affected by the loan charge. We suggest that, as far as possible, HMRC should segment loan charge cases into different groups (based on, for example, income levels / scheme type / timing of 'usage' or even just taxpayers volunteering information, and current financial circumstances) and tailor their approach to managing cases accordingly. For the two groups our response focuses on (as identified in paragraphs 1.6 and 1.8), this may require flexibility and departure from normal HMRC processes. With the right political support, clear instruction, and empowerment, we are confident HMRC can adopt this more nuanced and responsive approach. Finally, clearer guidance and a transparent timeline for resolution are essential to help individuals navigate the process with confidence.

1.13. Overall, we believe that there is an urgent need for action. The loan charge arose over 6 years ago and many cases remain locked in a cycle of unresolved issues. Without changes to help bring these cases to a conclusion, it is difficult to see how the underlying barriers are going to ease, and indeed they are more likely to significantly worsen as time passes, which then has both a financial and emotional impact on the individuals affected. There has to be a recognition by all parties that resolution is the desirable outcome. There is little to be gained from these issues remaining unresolved.

1.14. We know and recognise there are experts and other interested parties better placed than us to share their learning and represent some of the other groups not mentioned above and would encourage the Review team to engage with those groups.

2. Introduction

2.1. The CIOT and LITRG are pleased to provide a joint response to the Independent Loan Charge Review 2005, announced on 23 January 2025.

2.2. We note that the objectives of the review are:

- Bringing the matter to a close for those affected;
- Ensuring fairness for all taxpayers; and
- Ensuring that appropriate support is in place for those subject to the Loan Charge.

2.3. We also note that the review is being asked to consider:

- The settlement terms available to those who are subject to the Loan Charge who have not yet settled and paid their tax liabilities in full to HMRC and whether HMRC's settlement and debt management processes sufficiently take into account their ability to pay and behaviours;
- How that population could now be encouraged to reach resolution with HMRC; and
- What decisions would be required to ensure that, as far as possible, any new settlement proposals were properly targeted whilst not imposing significant additional administrative burdens upon HMRC.

And that the review will only consider disguised remuneration scheme use between and including 9 December 2010 and 5 April 2019 that is in scope of the Loan Charge legislation (Schedules 11 and 12 to the Finance (No.2) Act 2017).

2.4. The CIOT's stated objective for the tax systems include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

2.5. Our response considers how to bring loan charge matters to a close by identifying some of the barriers faced by taxpayers in agreeing and settling loan charge liabilities, and suggesting possible options to remove said barriers. Our response is greatly assisted by the input from TaxAid and we include with this submission as Appendix 1 the insights from TaxAid based on their work supporting taxpayers subject to the loan charge. The examples included in Appendix 1 illustrate how some taxpayers subject to the loan charge had no real understanding that they were involved in tax avoidance, and no understanding how to resolve matters once they were aware, let alone knowing the Self Assessment obligations they were under or the processes they could follow to challenge determinations and assessments. In particular, it is worth noting that lower-paid agency workers affected by loan charge-related issues are more likely to have been used to having taxes withheld by their employer via PAYE and not used to directly interacting with either the Self Assessment system or HMRC.

2.6. Our comments extend to both outstanding loan charge liabilities and related liabilities.

2.7. Our submission focuses on responding to the questions in sections 5 and 6 of the call for evidence and, in particular, questions 5.4 and 5.5, and 6.1. This said, we would make the following overarching, general observations to give context to our specific comments:

2.8. ***Complexity***

We are aware that many taxpayers are facing barriers to settling their loan charge liabilities. The guidance at Report and account for your disguised remuneration loan charge - GOV.UK illustrates just how complicated the loan charge is. Navigating the nuances as to whether there is a loan based remuneration arrangement since December 2010, whether it is from an employer or trade based organisation, whether the employer is on or offshore, or insolvent, or whether the employer has paid the loan charge via PAYE or there is a transfer

of liability, then working out what to include on a Self Assessment tax return, what credits or offsets may be available, is difficult enough of itself. And that is before having to navigate things like late filing and late payment penalties, and interest, and agreeing time to pay or instalments (even assuming the taxpayer has the means to pay).

It is understandable that some taxpayers struggle to navigate the loan charge without professional assistance. Yet we also know that the profile of some of those affected means that they are unlikely to be able to afford professional assistance, with TaxAid potentially being their only option. However TaxAid do not have infinite resources to support all that need their help.

2.9. ***The population affected by the loan charge***

Our understanding is that a significant number of people have still not met some or all of their loan charge obligations. Some of these people may have made a choice (either alone or following advice) not to do so, but that will not be the case for everyone. While there are several inter-related problems leading to people inadvertently failing to meet their obligations some taxpayers affected by the loan charge are lower-paid workers placed into umbrella type arrangements without their knowledge.

Despite the lack of official evidence / information that has been shared on the use of schemes, numbers of taxpayers involved and the breakdown of the groups affected, including how they entered such schemes, it is clear (including from TaxAid's Appendix 1) that a wider range of people are affected by the loan charge than was thought when it was incepted. The reasons that people ended up in loan schemes are varied: some were in the market for an avoidance solution and understood the risks of disguised remuneration (DR) schemes, some used avoidance schemes without being made fully aware of the risks and consider themselves to be the victims of mis-selling by the promoters involved, yet others were lower-paid agency workers who were placed in such schemes by their engagers for the benefit of others, with little or no knowledge of the arrangements. There are others who fall somewhere in between. HMRC have not always recognised these nuances in their approach to resolving cases. Rather than a balanced approach, it does seem that HMRC has taken an overall punitive approach to all taxpayers affected by the loan charge when it would be better to segment people, understand their individual circumstances, and deal with things in a proportionate and appropriate way (i.e. more 'carrot' than 'stick').

Because of this, and regardless of how the taxpayers have ended up with a loan charge liability, many now find themselves facing a complex tangle of issues that they may not understand and that due to the passage of time and the fact the loan charge has been bolted onto the Self Assessment system, compound every day. Although we understand few of the outstanding cases have reached the end of the full process for individuals to know exactly what they owe, undoubtedly some are facing liabilities that they cannot or are struggling to pay, whether due to a change of financial circumstances or because they were, and still are, low incomed workers.

2.10. ***Background to agency workers and the loan charge***

There is a long running history of avoidance behaviour in the temporary worker labour market, much of it facilitated by umbrella companies in the supply chain.

There is often only a small margin between the amount of money received by the umbrella company, by the agency, or end client and the amount they pay in employment costs and to the workers. Anything they can do to reduce the costs of employment means they can increase their profitability or share it throughout the

supply chain, increasing their competitiveness (tax 'efficiency' means that contracts can be negotiated at lower prices).

During the latter years of the loan charge period, so from around 2016 onwards, there were a number of changes to the landscape that made it harder for umbrella companies to operate in their usual manner – for example, the travel and subsistence changes that stopped them being able to process tax and NIC free expenses and then the 2017 off payroll working changes that stopped them being able to pay workers gross. By using loan arrangements instead, and paying workers a legitimate National Minimum Wage (NMW) salary, topped up with a tax-free element, they were able to pay a similar or slightly higher net pay to a worker out of a lower gross amount – thus increasing their margin.

The example in Appendix 2, which was raised via LITRG's website, demonstrates that the use of loan arrangements in the agency worker sector was sometimes more about avoidance behaviour on the part of the engager, rather than because the worker had any real avoidance motive themselves. Often, there was no avoidance motive on the part of the worker, it was just how they were paid by umbrella companies (who used DR schemes to profit themselves / be competitive).

We think that until recently, HMRC seem to have a bit of a 'blind spot' to this set of workers. Granted, workers may have received slightly more net pay than they were expecting and it may have been going into their bank accounts in two payments. But it should be remembered that many of these workers are not sufficiently well-versed in HR and payroll matters to understand how their pay and taxes should be calculated and delivered and not everyone has ready access to their pay documents anymore – often they are only provided online / are password protected, etc.

Some agency workers are young and inexperienced, they may have limited education with lower levels of numeracy and literacy, or have English as a second language. Even if they do not fall into one or more of these categories, for the majority, it is important to appreciate that the PAYE system discourages employees to engage with their tax affairs. The employer is the tax gatherer, administering an employee's tax for them and the employee can become very passive, assuming it is all taken care of. This is an excellent system when it works well, but it can contain pitfalls for the unwary.

2.11. ***The need for action***

With cases remaining unresolved after more than 6 years since the loan charge was deemed to arise (and potentially relating back to income received almost 15 years ago) it is evident that there are some fundamental barriers in play that require an intervention to settlement. Without changes to help bring these cases to a conclusion, it is difficult to see how the underlying barriers are going to ease, and indeed they are more likely to significantly worsen as time passes. This has implications for HMRC in terms of momentum and resource and cases and wider issues but more significantly for the individuals concerned, who may be incurring further stress, misery, and costs as a result. The longer issues relating to the loan charge continue, the more scrutiny and criticism it attracts – which only serves to damage trust in HMRC and the tax system.

3. Call for evidence – response

3.1. ***Question 5.4 – What more, in your opinion, could be done to help both those with outstanding liabilities and HMRC reach a fair settlement?***

In answer to this question we provide some comments and recommendations on the individual elements which are preventing those with outstanding liabilities and HMRC reach a resolution. In many cases, these are supported by TaxAid's evidence in Appendix 1 – providing real-world examples of the difficult, sometimes technical, often overlapping issues.

3.2. *HMRC Charter*

The HMRC Charter defines the service and standard of behaviour that taxpayers should expect from HMRC. The Charter principles expect HMRC to:

- Help taxpayers meet their tax responsibilities
- Give accurate, consistent and clear information
- Provide accessible and easy to use services
- Resolve things first time (or as quickly as possible)
- Treat taxpayers fairly
- Be aware of the taxpayer's personal situation

We do not think that HMRC have met these expectations in all cases. Critically assessing the application of these principles to loan charge cases – for example, by providing clear information on schemes and amounts involved, and clear guidance on what is expected from taxpayers – could pave the way to positively engaging with taxpayers who have been unable to resolve their loan charge issues. This should help HMRC engage with taxpayers more positively – on the basis that they want to help them get it right, pay what they owe (or what they can afford) and get on with their lives; rather than to penalise their wrongdoing, which only makes matters worse.

3.3. *The Morse review*

While enacting the recommendations of the Morse review was welcome, it is evident they have not had the full desired outcome. This appears to be because of a combination of things such as the bar being set too high in terms of what a reasonable disclosure was[2], taxpayers not recognising that they were affected by the loan charge and therefore not paying attention to the Morse review, and taxpayers missing the extended filing deadline (and then, if they missed the deadline by even one day, being charged late filing and late payment penalties, as well as interest, from 1 February 2020 rather than progressively from 1 October 2020).

One of the main recommendations from the Morse review, that had the potential to meaningfully benefit individuals, was the ability to make a spreading election[3]. While it was anticipated this would benefit up to 21,000 workers, we understand that many fewer have made the election. We think HMRC should evaluate this and review what they can do to give better effect to the Morse recommendations.

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[2] One of the recommendations was: the loan charge will not apply to outstanding loans made in any tax years before 6 April 2016 where a reasonable disclosure of the use of the tax avoidance scheme was made to HMRC and HMRC did not take action (for example, opening an enquiry into an Income Tax return)

[3] The recommendation read: Taxpayers should be entitled to opt to spread their outstanding loan balances over three years, to mitigate the impact of taxpayers paying tax at a higher rate than they ordinarily would. This reduces the effect of stacking their outstanding loan balances into a single year, which artificially created an increased exposure to a higher rate of income tax.

3.4. ***Lack of information***

HMRC could work directly with each taxpayer to establish what schemes they were entered into, and for what period(s). For example, it is apparent that in some cases limited information on a DR arrangement has been extrapolated out by HMRC to assume a taxpayer was in a particular arrangement for a whole tax year, with revenue determinations issued based on this, when a taxpayer was only in a scheme for a short period. Taxpayers will not always be aware they were in a scheme and the only information they will have is that they worked for and got paid by an umbrella company.

Compounding the problem, HMRC's calculations are frequently opaque and taxpayers are not automatically told the source of the data that HMRC have based them on or their methodology. This, along with the lack of insight on the taxpayer's part, makes it hard to check them, let alone agree them – or importantly, appeal them if necessary. Clearer explanations and proactive support of taxpayers by HMRC in identifying and locating any information that could help confirm income details and resolve discrepancies fairly would be a helpful step forward.

3.5. ***Self Assessment – late returns and associated issues***

It is apparent that despite all the work done on taxpayer compliance by HMRC, a significant number of Self Assessment tax returns containing the loan charge were not filed correctly. While some may be because the taxpayers hoped the various legal and other challenges would cause the loan charge to 'go away', for some this will have been because the taxpayers were either not aware that they were subject to the loan charge or were finding it too difficult to comply with HMRC's requirements. Standard wording in the 2018/19 notice to file a Self Assessment return did not help as it did not draw taxpayers' attention to the loan charge trigger. The result of this has been late filing penalties / inaccurate returns and HMRC resorting to assessments / determinations. But it is apparent that the figures being used in these are sometimes overestimations, again leading to people not engaging with HMRC to try to resolve the issue.

There is a need for HMRC to find practical, supportive measures to get around Self Assessment penalties and associated issues to improve the resolution process for all parties involved.

Indeed, the fact that late filing and payment penalties can have a totally disproportionate impact in some cases may be stopping taxpayers from engaging with HMRC. Addressing this, for example by automatically accepting a reasonable excuse defence to the late filing and payment penalties for tax returns, could be a way for HMRC to help encourage taxpayers to meet their loan charge obligations.

Also, could HMRC adopt a pragmatic approach to the level of evidence required to offset inaccurate assessments / determinations? Currently some contain inflated debt elements such as payments on account generated by a determination. HMRC could also consider allowing a way to address out of time determinations without requiring a Special Relief Claim. Once issues are resolved, for those only in Self Assessment because of the loan charge, the pro-active closure of the Self Assessment records would be helpful so that tax returns do not continue to be issued. Beyond this, improving clarity and communication in taxpayer letters is essential to help taxpayers understand and meet their responsibilities accurately.

3.6. ***Employer liabilities***

It is often not clear whether HMRC have, or are, pursuing employers that provided the loan-based remuneration – where that employer was still in existence as at 5 April 2019 – to collect the loan charge via PAYE. Explaining what has, or is, being done to collect the loan charge from employers is important, as are the reasons for asking the taxpayer (employee) to pay, particularly if employer investigations have not concluded. On the other hand, if pursuing umbrella companies that were still in existence as of 5 April 2019 for the loan charge is essentially a lost cause, then this makes the section 222 charge (see below) on the employee even more unfair.

3.7. ***Technical difficulties***

It is apparent that some taxpayers within the scope of the loan charge for some DR payments, are being assessed on other DR payments, outside of the loan charge. HMRC still seem to be working through schemes on a scheme-by-scheme basis to technically check the underlying arrangements to see if they are actually within the loan charge or not (usually dependant on whether there is a third-party involvement). This can mean calculations need to be reworked or even started from scratch as more information about the underlying scheme arrangements becomes known.

We are aware of cases where it is not clear to the taxpayer why one scheme is subject to the loan charge and another subject to direct assessment. For many taxpayers there is little difference to the arrangements and the confusing manner in which some payments are treated differently to others makes it difficult to understand what the true liabilities are. It also fosters suspicion around HMRC's assertions around peoples' loan charge exposure more fundamentally. Greater clarity and consistency are needed to build trust and aid resolution. One option may be for HMRC to pause cases until their work on analysing schemes is complete.

Even where it appears all arrangements are fully within scope of the loan charge, there is a lot of confusion, particularly where there are underlying historic disputes. For example, taxpayers in some cases where communication/progress has been inconsistent, may lack clarity as to whether enquiries or assessments are still 'open'. Even where it is established that there is an old open enquiry or assessment it is not clear how things are going to work in terms of sequencing and double tax relief. Is that historic year to be worked through in detail first, or included within the loan charge first (even if not fully worked), and if the latter does the residual tax concession apply?

It is also not clear whether people with open historic disputes who are in the settlement process actually need to physically file a loan charge tax return. We had understood it was a mandatory step but subsequently were told that the 2020 settlement terms allow HMRC to calculate the total amount due (both loan charge if not yet paid and any additional tax not covered by double tax relief if residual tax concession does not apply plus any non-loan charge legacy DR usages). The settlement essentially consolidates everything and tax returns may not be necessary. This is helpful, although perhaps counter intuitive given the emphasis on the need to return the loan charge in a tax return and all the work that went in to issuing 2018/19 notices to file. It is not expressly stated in the guidance[4] and we do not know if it is applied universally. For certainty and to provide confidence in the process, confirmation of issues such as these would be welcome, along with an understanding of what will happen to the Self Assessment record in such cases and how interest is applied in situations involving both outstanding historic disputes and late loan charge issues.

[4] https://www.gov.uk/government/publications/disguised-remuneration-settlement-terms-2020/disguised-remuneration-settlement-terms-2020

3.8. ***The residual tax concession***

The residual tax concession[5] should have allowed a short cut to resolving these cases but in practice few understand the concession. Consequently, it seems that few are able to benefit from it. We suggest HMRC could make broader use of the residual tax concession – potentially using it to cover not just the open year underlying tax, but also associated interest, penalties etc, and without having to work the historic case in detail.

3.9. ***Section 222, ITEPA 2003***

Equally, we see HMRC imposing a section 222, Income Tax (Earnings and Pensions) Tax 2003 (ITEPA 2003) 'tax on tax' charge on the PAYE that should have been paid by the employer, which just adds to the confusion and feeling of unfairness. While there is an easement[6], afforded by HMRC using its collection and management powers to decide that they will not collect section 222 liabilities in certain circumstances, it is very limited, and we are not aware of any cases where it has been applied.

We think HMRC should be empowered to use its discretion to waive section 222 tax charges in respect of any income to which the loan charge applies. It should be accepted either (i) that there was a legally enforceable obligation on the part of the trustee to indemnify the employer for the tax owing, or (ii) that payment of the loan charge by the taxpayer offsets the obligation of the employer to account for PAYE on that income and, thus, there is nothing to which section 222 can apply, or (iii) that any transfer of the PAYE liability from the deemed employer to the taxpayer switches off section 222.

3.10. ***Settlement agreements***

From our understanding it appears that HMRC want taxpayers to agree settlement contracts, even in very basic situations where it would just be better to go through ordinary processes[7]. Whilst a contract settlement can be a very efficient way of settling enquiries in appropriate cases, we understand this is elongating potential closure of simple cases by months, if not years, because the taxpayers concerned do not understand contract settlements and are fearful of them (which is particularly problematic in cases where they cannot afford advice).

3.11. ***Ability to pay***

A further significant barrier to bringing these cases to an end is ability to pay. HMRC appears to want to agree liabilities before giving any consideration to payment arrangements. We understand the result of this is few taxpayers are getting to the stage where it is possible to know whether HMRC will be sympathetic to the taxpayer's current financial circumstances.

Despite reassurances from HMRC, many taxpayers are fearful of being made bankrupt by HMRC because of their inability to pay the full amount of what they owe. There is an evident fear that HMRC will force taxpayers

[5] https://www.gov.uk/government/publications/disguised-remuneration-settlement-terms-2020/disguised-remuneration-settlement-terms-2020#residual-tax

[6] https://www.litrg.org.uk/news/loan-charge-and-section-222-charges

[7] This is explored in an article written by LITRG; https://www.litrg.org.uk/news/got-loan-charge-bill-you-cant-pay-one-go-use-our-case-study-understand-your-options

to sell their main home, cash in their pension, or place unreasonable demands on the level of evidence required to agree realistic instalment payments / time to pay.

We also understand that HMRC will not accept a voluntary legal charge on a property and prefer a legal charge through courts. But for a lot of contractors a legal charge on their property needs to be avoided as they will no longer be able to work in certain sectors (e.g. those governed by FCA).

A more flexible and understanding approach to a taxpayer's ability to pay is needed to address these concerns and facilitate fair settlements.

3.12. ***Substandard offers***

The rules that the substandard offers panel work to in Counter Avoidance are generally unknown outside of HMRC. It would be helpful if the criteria or some insight could be published as to how the rules will be applied in loan charge cases. Anecdotally, we are not aware of any cases that have come back from the panel with agreement to mitigate any level of HMRC debt.

3.13. ***Hardship cases***

HMRC should be empowered to make clear statements, backed by examples, that in cases of proven hardship (i.e. where the taxpayer genuinely cannot pay) they may settle for less than the full amount due. More and more taxpayers are suffering from ill-health and mental issues, time off sick, etc. because they are unable to pay the loan charge. There should be a clear statement of intent regarding remission of some / all tax due and / or agreeing payment arrangements for the balance, that are fair to both the taxpayer and the Exchequer.

For example, in tax credit overpayment cases, an individual could ask to repay what they owe over a longer period if they were having financial difficulty. In the early days of tax credits there was a significant risk that a small change in circumstances could lead to a large overpayment. Anecdotally, we have heard of cases whereby the individual was able to repay as little as £10 per month due to their financial position, even though this might result in them not repaying the overpayment for many years. At the 10 year point, the debt was sometimes remitted (not completely written off) and would remain so unless the claimant's financial circumstances changed such that they could pay the remaining debt. A similar pragmatic approach could be taken in loan charge cases where the taxpayer provides evidence of financial difficulties.

3.14. ***Instalment plans***

Additionally, the agreement of payment arrangements should be a routine part of the closure of loan charge cases. Colleagues from HMRC's Debt Management & Banking should be able to work with Counter Avoidance case officers to share their experience and expertise and agree realistic instalment plans.

Our evidence suggests that HMRC has been inconsistent with payment arrangements and that the approach by Counter Avoidance appears to vary from Debt Management and similarly within each department. Some consistency is needed for advisers to be able to help taxpayers agree payment arrangements with HMRC and to ensure fairness.

Furthermore, we suggest a dedicated contact number for those paying their loan charge liabilities to contact HMRC and pro-actively agree to revisions to their payment schedule where their circumstances change.

Currently it appears that a taxpayer has to default on a payment before HMRC will consider a revised payment plan, which is not beneficial to any party.

3.15. ***Tailored approach to resolution***

Segmenting the taxpayer population into different groups based on underlying circumstances, including their current financial circumstances, and tailoring the approach to each accordingly could help taxpayers and HMRC to reach a fair and quicker resolution.

As we have explained above, some taxpayers caught up in DR arrangements, especially post-2016/17 were agency workers, placed into umbrella company schemes. In these cases the arrangements were often not disclosed (or fully disclosed) and much of the 'tax advantage' was taken in fees by those promoting and enabling the schemes. In many cases, we would not expect them to understand what they were involved in. Providing a more compassionate, tailored service more befitting of taxpayers that have been unwitting participants in these schemes would, we think, remove a huge barrier to settling these cases. The language used in correspondence needs to be tailored accordingly. In line with the recommendations above, HMRC needs to be empowered to do things like waive late filing penalties and accept late spreading elections as part of this.

Even where it is evident that the taxpayer knew, or should have known, that they were participating in a DR scheme, the approach to settling these cases needs to be tailored. While some would have been higher-paid taxpayers at the time, they may have had a significant change in circumstances since (for example they may be in poor health, or they may have retired) and, as a result, they may not have the financial means to settle the tax owing (let alone any interest or penalties). HMRC needs to be empowered to agree settlements for less than the full amount due, where appropriate evidence is provided by the taxpayer of what they can afford to pay. This would also be in the best interests of the Exchequer – collecting what someone can pay and closing the case is likely to be a more cost-effective outcome overall.

Importantly, HMRC would show empathy by reflecting the role of scheme promoters and enablers in its tone and communication. Acknowledging that many of these taxpayers were heavily influenced—or even misled—by those profiting from the arrangements would help build trust and demonstrate that HMRC are approaching these cases with fairness and understanding. Such an approach would also help rebuild confidence in the system and encourage more constructive engagement from affected individuals.

3.16. ***Other issues***

We recognise there are many other issues arising from the loan charge, and many different groups that are affected by the loan charge. There are experts and other interested parties better placed than us to share their learning and represent some of these other groups and issues. These include Accelerated Payment Notices (APNs), APN late payment penalties and interest, Follower Notices, and transfer of liability of pre-9 December 2010 loans under section 684(7A) ITEPA 2003 – which relieves the end user (employer or engager or third party) from their obligations to account for PAYE on payments and allows HMRC to transfer that liability to the taxpayer.

And to add, in our view, it has not been normal practice for HMRC to use their discretion under section 684(7A) to transfer liability to the taxpayer. If it had been the norm to use that power then we do not think that the loan charge would have been needed, as all PAYE due under DR loan arrangements could have been transferred to the taxpayer using this power at the time. For example, consideration should be given to

whether HMRC should exercise its discretion under section 684(7A) in respect of periods prior to 9 December 2010[8].

3.17. ***Question 5.5 – Is there any further evidence you wish to supply, specific to your role as an organisation or adviser?***

Yes, see paragraphs 3.18 and 3.19 below.

3.18. ***Interest***

Interest charges on loan charge liabilities (and on penalties arising from late charge failures) have the potential to significantly increase the amount owing – more so now that the rate of interest on overdue tax rose to 8.75% from 6 April 2025 (8.25% from 28 May 2025). While it is understandable that government wishes to disincentivise deliberate non-payment of taxes where a taxpayer knows these to be due, in some cases the taxpayer did not know that they were subject to the loan charge. And even once they were aware and understood their compliance obligations it has been anything but a swift process agreeing loan charge liabilities.

In particular, HMRC delay in enquiry or investigation cases causes unnecessary interest costs to arise. And this will include loan charge cases. Frequently, a liability to tax is disputed and / or that there is no clarity as to the amount of tax which may be due. Or HMRC issues a discovery assessment many years later for a liability the taxpayer was unaware of. We also see significant delays in receiving HMRC responses to correspondence.

Many ask whether it is appropriate for HMRC to charge interest for periods in which any delay in resolving matters is HMRC's responsibility. The current position appears to be that in any circumstances where there was an open enquiry, or where the taxpayer could have considered that there may be a liability, there is unlikely to be any prospect of interest mitigation. The criteria set out in the DMB manual (at DMBM405010 onwards) are extremely restrictive. Although there is a general discretion as a result of HMRC's Care and Management powers (CRCA 2005) to mitigate interest, we are not aware of a case involving an enquiry or investigation where that discretion has actually been exercised by HMRC's Interest Review Unit, but we suggest this should be considered as a routine option in cases of delay in loan charge cases. This would ensure that taxpayers who suffer significant and unreasonable delay have interest costs reduced notwithstanding that a payment on account could have been made. This would help mitigate what is a significant barrier to settlement for some.

More generally, consideration should be given to whether it is appropriate to charge interest in loan charge cases and, if so, at what rate. HMRC's interest rates are above market rate and therefore arguably have a penal element to them. That may be appropriate where a taxpayer has had money that they know should have been paid to HMRC as tax for longer than they should, but for the taxpayer populations we have highlighted above that is generally not the case. They will typically not have "invested the tax" elsewhere. With interest in some cases probably now reaching such a level as to be a genuine inhibitor to settling, there is a case for wider defrayal of interest (or, at least, reducing the rate to a much more market-level).

Future interest

[8]There is guidance at PAYE140000+ on the use of HMRC's discretion under section 684(7A) but this only applies to contractor loan avoidance schemes.

As well as any 'historic interest', taxpayers may face 'forward interest' for any payment arrangements. Interest will be calculated on the reducing balance at a flat rate, which shields them from interest rate fluctuations, but will include a 1% surcharge. We understand that the 1% is not statutory, so there is potential for HMRC to waive this charge.

3.19. ***Inheritance tax***

Depending on the specifics of the planning, any trust (for example, an Employee Benefit Trust (EBT)) created to receive monies from an employer to advance as loans to employees) may be within the IHT relevant property regime. And section 86, Inheritance Tax Act 1984 (IHTA 1984), which relieves EBT's from IHT, may not apply depending on how the trust deed is drafted.

In some cases it appears that as part of the settlement process HMRC is seeking 10-yearly IHT charges on funds advanced or, where the EBT is offshore, treating the arrangements as offshore evasion with the more severe penalties that then apply.

This presents a potential additional barrier to resolving loan charge cases. There is the financial liability of the IHT charge (which is generally unexpected and not understood). There is also the administration complexity that such a charge causes. For example, unless the taxpayer can confirm to HMRC that the loan is written off, HMRC cannot finalise the settlement as they have to keep it under review in case future 10 year charges arise. But to get the loan written off is complicated (and potentially costly).

If it is the government's policy that the loans were earnings all along (and the loan charge is simply a mechanism for ensuring the earnings are taxed) then it would be reasonable to look through the loans for IHT purposes too and taking a decision not to pursue IHT liabilities.

3.20. ***Question 6.1 – Is there any further information you wish to provide that you think is relevant to the review, noting the terms of reference?***

Yes, see paragraphs 3.21 to 3.24 below.

3.21. *Fairness, discretion and certainty*

While the starting point should be that HMRC should always apply the law, it is evident that in many loan charge cases this will not necessarily produce the fairest and most just outcomes, and therefore HMRC either needs to consider where it has discretion, or where legislative change may be required if this matter is to be resolved.

We support the duty to pay what is owed but it should also be recognised that it is understandable for taxpayers to make unintentional mistakes and, for some, this is inevitable given the perceived complexity of complying and effort required. Given the importance of fairness in establishing a relationship of trust with HMRC, a sense of unfairness regarding how genuine mistakes are perceived to be handled by HMRC can lead to an erosion of that trust. It is important that HMRC's powers are not perceived to be being used disproportionately regarding 'honest' mistakes or that past efforts of compliance would be disregarded in the case of an error.

3.22. ***Exercise of discretion by HMRC***

We believe that government should review whether HMRC have the power to use their discretion under section 5 of the Commissioners for Revenue & Customs Act 2005 (CRCA 2005) to settle many of the outstanding loan charge cases. The exercise of HMRC's discretion would in appropriate cases result in a more efficient management of outstanding loan charge disputes.

While the decision to exercise discretion must be a judgement based on the full facts of each specific case, we think that government can instruct HMRC to exercise its discretion so as to give effect to many of the recommendations made throughout this response, including:

(i) allowing late appeals against late filing penalties, determinations and assessments,
(ii) accepting that many taxpayers may have a reasonable excuse for not filing their Self Assessment tax return on time,
(iii) waiving interest (in full or in part) on agreed liabilities,
(iv) collecting less than the full liability due to the individual circumstances of the taxpayer,
(v) accepting late claims for spreading elections, and
(vi) not pursuing IHT.

3.23. ***Cost of resolving loan charge cases***

We think that there is scope for HMRC to use their discretion to take account of a taxpayer's ability to pay, and the time and costs HMRC would incur if they were to pursue collection of 100% of loan charge liabilities. This does not mean that HMRC should refrain from assessing taxes that Parliament has decreed shall be paid, but HMRC should take account of whether there is any value to the Exchequer in seeking to obtain the highest return rather than the highest net return.

HMRC would, undoubtedly, benefit by bringing these cases to a resolution: not just from the tax that they could actually recover but also from being able to redeploy the considerable resources they have tied up in dealing with these issues.

For taxpayers, if they were able to resolve their loan charge liabilities, this would not only bring financial certainty but would also be a huge relief.

3.24. ***Disguised remuneration schemes pre and post loan charge***

There is, of course, an important question about what happens to those who are not included within the scope of the review. For example, those who were paid through disguised remuneration (DR) in 2019/20 onwards? Or have open enquiries from years prior to 2010. As we all know, the loan charge has not shut down DR schemes in the manner hoped and people have continued to get caught up in schemes (which alludes to the fact that HMRC's assumptions around 'users' are an oversimplification).

If recommendations are made as a consequence of this review which 'roll back' some of the harshest effects, then we hope that HMRC can be persuaded to at least embrace the spirit of the changes when dealing with other DR cases before them, even if strictly they do not apply. Looking forward, it is worth saying that the

recent policy proposals[9] around umbrella companies, which essentially focus on the PAYE failure side of DR, should produce a step change in results, shutting down DR once and for all.

Equally, it will be important to mitigate potential unfair outcomes, for example, those who were advised not to comply could end up in a better situation than those who did pay the loan charge. If recommendations from this review mean that those who have already paid the loan charge and settled would have had a lower debt, we hope that HMRC can provide a similar outcome to those people, even though the terms of reference for the review exclude those who have settled their loan charge liabilities.

4. Acknowledgement of submission

4.1. We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation, LITRG and TaxAid are included in the List of Respondents when any outcome of the review is published.

The Chartered Institute of Taxation

5 June 2025

[9] https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market/outcome/tackling-non-compliance-in-the-umbrella-company-market-government-response-

APPENDIX 2 – Example from LITRG website

Example: Jess - using DR without knowing

It is May 2024. Jess is a weekly paid worker. She works 35 hours a week and her gross pay rate is £14 an hour. In order that the umbrella company can deliver £14 an hour to Jess, her agency passes £629.70 to the umbrella company in respect of her 35 hours work.

Where DR arrangements are used, the umbrella company increases the amount of money they retain as a margin (£26 in the top payslip below), significantly. They deliver Jess a similar level of net pay, out of a lower gross pay amount, and cut their 'on top' employment costs. The umbrella company can easily double or triple their margin from a particular contract rate.

Jess: normal payslip

Umbrella Company Ltd					
Employee number	**Name**		**NI Number**		**Date**
123	Jess		QQ123456A		7-May-24
Contractor statement					
Agency receipts	**Units**	**Rate**	**Amount**	**Employer deductions**	
Normal time	35	17.99	629.70	Pension	11.10
Re services to Agency X				Holiday	59.14
				Employer NIC	43.47
				Margin	26

Payslip					
Employee payments	**Units**	**Rate**	**Amount**	**Employee deductions**	
Salary	35	11.44	400.40	Tax	49.60
Taxable bonus	35	2.56	89.60	Employee NIC	19.84
				Pension	14.80
Total gross pay for tax			**£490**	**Net pay**	**405.76**
Tax code 1257L				BACS	

Note – in terms of the 'bonus' on the above payslip - umbrella companies usually use a payment structure where they use the NMW plus a taxable variable bonus or commission to pay their workers. There are two reasons for this structure: to limit financial risk to the umbrella, and to allow for pay rates to vary. However, in a compliant arrangement, both elements should be taxable. This is **not** what happens in disguised remuneration:

Jess: disguised remuneration payslip

Umbrella Company Ltd					
Employee number	**Name**		**NI Number**		**Date**
123	Jess		QQ123456A		7-May-24
Contractor statement					
Agency receipts	**Units**	**Rate**	**Amount**	**Employer deductions**	
Normal time	35	17.99	629.70	Pension	8.41
Re services to Agency X				Holiday	48.33
				Employer NIC	31.33

Payslip					
Employee payments	**Units**	**Rate**	**Amount**	Employee deductions	
Salary	35	11.44	400.40	Tax	-31.68
				Employee NIC	-12.67
				Pension	-11.21
				Payment	60.92
Total gross pay for tax			**400.40**	**Net pay**	**405.76**
Tax code 1257L					
				BACS	

Suppose Jess's umbrella company above continues to receive £629.70 as per the agreed contract rate, but instead of using this to deliver a £14 an hour gross pay rate to Jess and take a £26 fee, it only delivers a gross salary rate of £11.44 per hour to Jess (the main minimum wage rate in May 2024) and no taxable bonus.

On a weekly gross salary of £400.40 (11.44 x 35 hours), the umbrella company's employment costs are reduced to £87.85 – leaving £141.45 from the received £629.70, for the umbrella company.

It then channels an additional ££60.92 to Jess through a non-taxed element (received by Jess 'gross', meaning without tax deducted, in addition to her taxed £400.40) in order to make her net pay up to the same as it was before £405.76), leaving the umbrella company with £80.53 (£141.45 - £60.92).

Thus, through using a loan arrangement, the umbrella company has made £80.53 rather than its usual £26. Jess is no better off then she would have otherwise been if she had simply received a gross pay of £490.

APPENDIX 3 – About the respondents

About Us - CIOT

The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

About Us - LITRG

The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.

LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.