

**House of Lords Finance Bill Sub-Committee - Follow up inquiry into the loan charge
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome the opportunity to contribute to the Committee's follow-up inquiry into the loan charge.
- 1.2 A wide range of people are affected by the loan charge and the reasons that they ended up in loan schemes are varied, however this response focuses on low-income agency workers that were put into loan arrangements by umbrella companies.
- 1.3 Although the reforms to the design of the loan charge recommended by Sir Amyas Morse have been enacted, in practice there are barriers which potentially mean some people aren't benefiting from them. Few people seem to have made a spreading election, for example, which we think is understandable for a number of reasons, all of which are within HMRC's hands to do something about.
- 1.4 HMRC seem to have taken on board some of Morse's comments about failings in terms of their culture and attitude, although they still seem to be having difficulty accepting the idea that many of those affected by the loan charge aren't tax avoiders in a traditional sense but are vulnerable agency workers who are basically being exploited by engagers using loan schemes for their own ends.
- 1.5 These people do not have enough information or insight about the loan arrangements they were put into, to fulfil their loan charge obligations, and this, coupled with an ongoing objection by some to the underlying policy, means that the loan charge saga continues to drag on.

- 1.6 We therefore take the opportunity to make some comments with regards to what we see as some of the remaining issues that need to be tackled in order to help fulfil the objectives of the Morse review and to bring closure to this difficult issue.
- 1.7 In particular, we think HMRC need to give people more time to fully research and understand their position, make a spreading election (if beneficial), file their loan charge tax return and pay (or make payment arrangements) - without penalty.

2 About Us

- 2.1 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.
- 2.2 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.
- 2.3 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.

3 Questions

- 3.1 **How effectively has HMRC responded to the Morse review and acted on its recommendations since the publication of the report last year?**
- 3.1.1 HMRC acted quickly following the Morse review. The main recommendation of benefit to the workers we are concerned with, is the spreading election¹, which was enacted via Section 16 FA 2020².

¹ 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.

² <https://www.legislation.gov.uk/ukpga/2020/14/section/16/enacted>

- 3.1.2 In HMRC's recent implementation review report¹ we note that they anticipated this recommendation would benefit up to 21,000 workers, but in reality less than 2,000 have actually made the election.
- 3.1.3 We can think of several reasons why people may not have made an election when it would have otherwise benefited them (outside of those who retain fundamental objections to the existence of the loan charge in any form). For example, some people may have faced problems with filling out the online loan charge reporting form² (the place the election is made)³ and some may have been unable to submit it as they could not complete the other required fields in the loan charge reporting form, such as the scheme name, the start and end dates of usage and the total loan amount in each tax year.
- 3.1.4 Even if they were able to physically make the election, some people may have been worried to make an *irrevocable* election, particularly those without access to tax advice. Spreading is not beneficial for everyone, but without advice, people may not have been able to work out whether it was beneficial or not for them.
- 3.1.5 Others may also have considered it some kind of 'trap' as there was perhaps a fear that, if there wasn't already an open enquiry or assessment, then making an election would prompt HMRC to pursue the tax 'saved' by using the spreading provisions by opening one. Our own view⁴ was that the risk of this was probably quite low, although we were unable to persuade HMRC to state their position publicly. A public statement from HMRC confirming this would have gone some way to reassuring people.
- 3.1.6 HMRC have recently extended the deadline to 31 December 2020 for people to make a spreading election but more time is needed to overcome these barriers.
- 3.2 **Are ongoing loan charge payments being fairly administered?**
- 3.2.1 We assume this question is asking whether HMRC are being fair in terms of how they are handling Time to Pay (TTP) arrangements. We don't have any evidence either way, however we note from the recent figures in HMRC's implementation review that only 289 TTP arrangements have been made for those paying the loan charge.

¹ <https://www.gov.uk/government/publications/independent-loan-charge-review-hmrc-report-on-implementation>

² <https://www.gov.uk/guidance/report-and-account-for-your-disguised-remuneration-loan-charge#how-to-report-a-disguised-remuneration-loan>

³ A paper form is available, but this is not easily accessed

⁴ As set out here: <https://www.litrg.org.uk/latest-news/news/200904-thinking-making-loan-charge-spreading-election>

- 3.2.2 Given 6,300 2018/19 tax returns have been filed containing the loan charge, we would have expected the numbers to be bigger than this, even taking into account that some people would have the funds to pay the loan charge in full.
- 3.2.3 From social media reports, it would appear that some people simply have not been able to make contact with HMRC. The phone number for arranging a TTP is the same number as the general loan charge helpline which faced increased demand in the lead up to 30 September 2020. Social media in the lead up to the 30 September deadline also suggested HMRC were trying to set payment arrangements that individuals felt were unrealistic, which meant that they could not be agreed. Unfortunately, no data is included in HMRC's report about how many people requested a time to pay but ultimately failed to agree one.
- 3.2.4 If the reports of phone problems and unrealistic payment plans are not true and HMRC are willing and able to arrange plans (which will, no doubt, involve them having to show extra sensitivity and flexibility given the unprecedented jobs and income situation caused by the CV19 pandemic), then we suggest HMRC should do more to counter this social media¹. The effect of not having a counter-voice on issues like this is that people may have put off dealing with the loan charge and arranging a TTP and may be worried and frightened of engaging with HMRC because they believe HMRC will ask for unrealistic amounts.

3.3 **Have loan charge repayments to those who were overcharged been properly administered?**

- 3.3.1 This isn't really within our area of expertise as it affects few of our constituents, although we understand, per the figures from the HMRC implementation review report, no voluntary restitution refunds have yet been processed. This is unsurprising as the refunds do not happen automatically and an application must be made via the voluntary restitution scheme, which is quite complex and involved and includes up to seven stages². It is foreseeable that some taxpayers will be put off claiming their refunds.
- 3.3.2 There may also be concern over what claiming a refund means in terms of a subsequent 'relevant step' being taken (for example if the loan is written off), as there will not be a tax credit available to 'frank' the subsequent transaction and taxpayers may face another tax bill later on. HMRC have confirmed that the double tax relief that was written into settlement agreements will be honoured, even if people get a refund, which is very fortunate.

¹ Simply publishing things on GOV.UK like the briefing setting out its debt strategy and its approach to Time to Pay arrangements, is not enough.

² <https://www.gov.uk/guidance/apply-for-a-refund-or-waiver-from-the-disguised-remuneration-repayment-scheme-2020>

- 3.3.3 Those who delayed settling pending the outcome of the Morse review are less fortunate however, as although they don't need to take any further action at the moment, they will face a tax charge if and when the loan is written off.¹ This seems quite unfair.
- 3.4 **Have the post-Morse actions been effectively communicated to those affected by them?**
- 3.4.1 There have been two main routes of communicating with taxpayers about the loan charge – letters and guidance. Both have improved somewhat since the Morse review, although in our view, even more could be done.
- 3.4.2 HMRC regularly engaged with stakeholders, including LITRG, when drafting letters in order to obtain our comments and feedback. However, not all letters were shared with us, and even where they were, there was often not sufficient time given for LITRG to comment coherently. Where we did offer feedback, our comments were often not adopted which meant that, in reality, we felt we had only a limited impact.
- 3.4.3 With regards to loan charge guidance, HMRC have started tailoring the guidance for different customer groups (such as paying the loan charge/those settling etc.)² which is helpful. However, there is now a lot of guidance on the loan charge spread over many different pages. There are also inherent problems with GOV.UK as a platform for HMRC to put out guidance, which means people may be struggling to find the guidance, let alone understand how it all fits together.
- 3.4.4 There are several areas where we think HMRC have failed in their communications. For example, in June 2020, HMRC sent out 'Notice to File' letters to all those who they believed had loan charge issues (per their data) who had not already filed or notified HMRC of their need to file a 2018/19 tax return.
- 3.4.5 The problem was that these were standard letters, and they did not include any mention of the loan charge. Some people, with knowledge they were part of loan arrangements, may have been expecting such a request and therefore able to connect it to the loan charge. However, the letters made no sense at all to those unaware that they had loan charge issues because the loan arrangements were operated in the background by their umbrella companies.
- 3.4.6 HMRC still seem reluctant to accept that these people exist, which has hampered their progress in dealing with them. However, we have many queries to our website which indicate that they do, for instance:

¹ We explain this problem further here: <https://www.accountingweb.co.uk/tax/personal-tax/loan-charge-voluntary-restitution-repayments-part-two>

² For an example, see here: <https://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/issue-briefing-disguised-remuneration-on-loans>

I left my permanent job in 2015 and started working through a recruitment agency in 2015. They said I needed an umbrella company and recommended one to join- who have since shut down. I left them in 2018 when my recruitment agency rang me and said they had failed an audit and i couldn't use them anymore. I have just found out (Jan 31st by letter) that I apparently have to pay the DR loan. Its the first I'd heard of it. I'd already done my tax return and paid my tax for the year. Is the recruitment agency responsible as they recommended the umbrella company? My weekly payslips show PAYE and NI deductions, there's nothing implying an advance or loan. I believed they were doing their job and managing my taxes. I sent weekly timesheets and received single weekly payments. Your website suggested contact regarding this for guidance. I'd be grateful for guidance.

- 3.4.7 In addition, we would like to make the following very important point with regards to the 'extension' of the loan charge filing and payment deadline from 31 January 2020 to 30 September 2020:
- 3.4.8 It should have been spelt out to taxpayers, in both letters and guidance that the 31 January 2020 statutory deadline for the 2018/18 tax year did not actually change, it was merely deferred - on the proviso that people met the 30 September 2020 deadline.
- 3.4.9 So, the fact is, for those that missed the 30 September 2020 deadline, late filing and payment penalties will be charged as if the 31 January 2020 original deadline was not met, meaning their tax return and payment are already over ten months late.
- 3.4.10 Even though daily late filing penalties have been waived for everyone due to CV19, this is potentially a very serious issue and means that someone who did not file their 2018/19 tax return by the extended 30 September 2020 deadline will not only have received a £100 late filing penalty but will also have incurred a 6-month late filing penalty. So, for example, someone who needs to include £1,000 of loan income in their 2018/19 tax return will have a tax liability of £200 (assuming they are a basic rate taxpayer). Yet their total interest and penalties are around £425¹.
- 3.4.11 The fact that late filing and payment interest and penalties could have a totally disproportionate impact in some cases may be stopping people taking the final steps required. A way to address this would be for HMRC to automatically accept a reasonable excuse defence to the late filing and payment penalties for tax returns submitted by a certain date, to help encourage people to meet their loan charge obligations.

¹ As they have missed the 30 September 2020 deadline for filing the 2018/19 tax return and sorting out the tax, they now face a £100 late filing penalty, plus a 6 monthly late filing penalty of £300. The amount of the 6-month late filing penalty will be the greater of £300 or 5% of the tax liability which would have been shown to be due if an accurate tax return had been filed on time. They will incur a further penalty of the same amount if they don't file their 2018/19 return by 31 January 2021 (the 12-month penalty). They will also need to pay £20 in late payment penalties (£10 for the 30-day penalty and £10 for the 6-month penalty). There is around £5 to pay in late payment interest.

3.5 What other ongoing problems are being faced by those affected by the loan charge, if any, and how are these being tackled?

3.5.1 We are hearing a lot about taxpayers who used loan arrangements in the past now being approached by the current loan owners and being asked to repay the loans.

3.5.2 Here is an example of a query we have recently received to our website about this:

3.5.3 *Hi Not sure you can help but I am finding it difficult to get answers. I used tax avoidance schemes in 2013, I have agreed HMRC settlement terms and have already paid a large proportion of what I owe. My problem is and not many seem to know about this but I have just received a fourth letter from (redacted) a company who claim they now own the original "loans" I took out in 2013. This fourth letter is a demand that I repay the £20,000 loan I supposedly took out with (redacted) in 2013. I am now a pensioner on a state pension with little savings and the only way I can repay is to sell my house!!! As everyone knows these loans were sold to us as never having to be repaid, can you recommend anyone who can help put my mind at rest as this is driving me mad with worry. Everyone I turn to either ignores my plea or says get expert legal advice but as this appears to be a specialist subject who should I trust.*

3.5.4 This is a very difficult situation - in a nutshell, the effect of the loan charge is that the loans are taxed as income, however for other purposes, it is quite possible they are still loans and depending on the legal position, it is also quite possible that the current loan owners are within their rights to make the demands (although whether the demands are enforceable is another matter).

3.5.5 HMRC say they can't do anything about it and people need to take legal advice but the risk is that people will not be able to afford to take legal advice and will feel so scared by the demands/letters (some of which we've seen) that they end up settling with HMRC/paying the loan charge but then paying back the loan anyway.

3.5.6 Steps must be taken to protect taxpayers from this, and we think that the government should consider taking action to resolve this.

3.6 What further action needs to be taken, if any, to assist those affected by the loan charge?

3.6.1 There are still significant numbers of people who do not appear to have met their loan charge obligations.

3.6.2 Figures in HMRC's recent loan charge implementation review report suggest that of the 55,000 people that HMRC wrote to about the loan charge in January 2020, at least 12,000 people have not yet filed a 2018/19 tax return at all (and there would appear to be a further number of people, who did file a 2018/19 tax return but not containing the loan charge).

3.6.3 The reasons for this are varied and complex and HMRC should certainly be doing more work to understand the reasons and numbers affected for each. But if the starting point is that some customers who are not engaging properly did not know they were in loan arrangements, then unless HMRC do something different (for example, like share the data

that they hold with customers about the umbrella companies that they were in where loan arrangements are suspected) the impasse may never be broken and the issue is never going to get any further forward.

- 3.6.4 We think HMRC should be writing to people who missed the 30 September deadline, or who sent in a tax return that did not contain the loan charge (when one was expected) setting out the specific information that HMRC hold about the umbrella companies that they were in where loan arrangements are suspected. This could help act as a trigger or prompt for taxpayers to investigate and take the first step to bringing their tax affairs up to date.
- 3.6.5 On the basis that many taxpayers will be worried about engaging with HMRC directly, and/or completing their tax returns, it is important that HMRC also highlight the available help, for example via TaxAid.¹ HMRC should also ensure the letters set out the range of options available to people in terms of spreading elections, time to pay arrangements and the other guarantees that HMRC have made (such as not making people sell their main home) to help reassure people about engagement.
- 3.7 **In light of the Government's forthcoming consultation on the role of promoters, what else may be done to take action against those who have promoted disguised remuneration schemes in the past? What penalties might deter promoters of aggressive tax avoidance schemes?**
- 3.7.1 In the main, those on low and moderate incomes are generally unable to use avoidance devices in order to reduce their tax liabilities, so in general, the DOTAS and POTAS regimes etc. are outside of our area of interest and expertise.
- 3.7.2 However, from what we do know, it seems to us that promoters have had little fear of HMRC to date, and it is hard to see how that will change even if the promoter's legislation is strengthened or any new measures are brought in (apart from perhaps finding a way of making promoters personally liable for any promoters penalties and/or the PAYE avoided by their associated employer entity). Quite understandably, this has only heightened the feeling by many of those affected by the loan charge that they have been 'penalised', while the others involved, such as employers and promoters have not.
- 3.7.3 Although we recognise that tackling promoters can be difficult for HMRC, if they can widen their focus away from simply trying to change promoter and taxpayer behaviour and try to do more to understand the temporary worker landscape and how supply chains work in the modern day labour market, it may be that other ways of tackling disguised remuneration will

¹ TaxAid have helped around 100 otherwise unrepresented taxpayers with loan charge issues – some of whom have had exceptionally hard cases - and with no additional funding (HMRC restricted the bid for funding under Recommendation 12 of the Morse Review to debt charities not tax advice charities).

present themselves. We explore this question in more detail in our response to HMRC's recent consultation on disguised remuneration¹.

LITRG

15 December 2020

¹ <https://www.litrg.org.uk/latest-news/submissions/200923-call-evidence-tackling-disguised-remuneration-tax-avoidance>