Budget 2021 representation
Loan charge – suggestion for a new review
Response from the Low Incomes Tax Reform Group (LITRG)

1 Summary

1.1 The Low Incomes Tax Reform Group (LITRG) is pleased to have the opportunity to make representations in relation to the 2021 Budget.

1.2 This submission concerns the loan charge.

1.3 Our understanding is that a significant number of people have still not met their obligations (either at all, or fully) with the loan charge. 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.

1.4 While there are several inter-related problems leading to people inadvertently failing to meet their obligations, these are caused by two main factors:

- HMRC are unable to segment loan charge cases into different groups based on underlying motivations, and tailor their approach accordingly.
- There are a number of individuals who have been unable to take advantage of the Morse recommendations which were intended to ease the impact of the loan charge on individuals. This is compounded by HMRC's actions at 1 above.

2 Our recommendation

We ask the Chancellor to consider pausing activity around the loan charge and to review the current loan charge situation. This should include an opportunity for external bodies/individuals to

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contribute evidence to the review. The review should critically assess the implementation and effectiveness of the Morse review recommendations as well as exploring options on how best to move forward with resolving outstanding cases.

3 Further information

3.1 It has become clear that a diverse population of workers is affected by the loan charge. From those who sought to avoid paying their tax to those who were unknowingly put into a loan scheme by their agency/umbrella company in order that *they* (the agency/umbrella) could gain an advantage in the labour market, including taking on lower paid agency nurses, teachers and construction workers.

3.2 The fact there are still such people being paid via disguised remuneration schemes, often by umbrella companies which are not even attempting to hide what they are doing, indicates that HMRCs stance (which has driven their approach throughout the loan charge) that 'individuals are responsible for their own tax affairs', is an oversimplification.

3.3 In December 2019, the Government announced a package of changes to the loan charge which were made in response to Sir Amyas Morse's independent review of the loan charge policy and its implementation. The main changes coming out of the Morse review, included that:

- Loans entered into on or after 9th December 2010 and up to 2016/17, where the relevant taxpayer made reasonable disclosure of their scheme usage to HMRC and where HMRC did not open an investigation, should be out of scope of the Loan Charge (and that any voluntary restitution of such, should be waived/refunded).
- 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.
- Those with loan charge related issues could file their 2018/19 tax return and pay the loan charge and any other tax due (or arrange a payment plan) by 30 September 2020 (rather than by 31 January 2020), without penalty.

3.4 These changes had the potential to help those affected by the loan charge, however we are concerned that they have not achieved their potential because:

- The bar has been set too high in terms of what counts as reasonable disclosure.
- It is very likely there are some individuals who still do not recognise themselves as being affected by the loan charge, let alone be able to understand how to take advantage of the spreading election (note that elections made on or after 1 January 2021 will not be accepted, except in limited circumstances where there are exceptional reasons for failing to make an election within the required time).
- For those who missed the extended 30 September 2020 filing and payment deadline, late filing and payment penalties will be charged as if the 31 January 2020 original deadline was not met (that is, accruing from 1 February 2020). The fact that late filing and payment interest and penalties could have a totally disproportionate impact in some cases, may be acting as a barrier to people taking the remaining steps required.

3.5 Although we have struggled to get any up-to-date figures from HMRC since those shared in the December 2020 implementation review[1], we are aware that HMRC have recently issued around 17,000 formal enquiry letters to people who have filed loan charge tax returns (suggesting that HMRC think the loan charge amounts are absent or 'wrong') and thousands of letters warning people that if they do not file their loan charge tax returns, determinations will be issued (an estimate of what HMRC think they owe, based on their records). We also understand that as of 9 August 2021, only 440 people have received either a repayment, a waiver or both and that the numbers of these due to reasonable disclosure are 'very low'.

3.6 Taken together, these figures suggest that something of an impasse has been reached. The introduction of the potential useful but difficult and technical Residual Tax Concession[2] seems to have had little impact. We feel a review is needed to consider other options to move forward.

3.7 If nothing else, HMRC pausing activity and taking a fresh look at the loan charge by conducting a review, would:

- give HMRC the opportunity to seek a deeper understanding of the different populations involved
- allow for a thorough consideration of all the different strands (some of which are still emerging)
- provide extra time for those that can comply, to comply, without their problems continuing to snowball
- mean that scrutiny and necessary improvement of HMRC's communications and processes could take place, including around the 'Residual Tax Concession'
- would demonstrate that the concerns of MP's (and their constituents) are being listened to
- allow HMRC and the Government to further consider the fact that some people are now being asked to repay the loans (please note – our Chartered Institute of Taxation (CIOT) colleagues have set out the position and some angles that could be explored, in a separate Budget Representation, which we endorse).

3.8 Our work in this area draws heavily on the experiences of TaxAid who are trying to assist increasing numbers of individuals to comply with their loan charge obligations (on already stretched resources) and people who write into our website. This representation is written with that background in mind.

3.9 We would be pleased to provide further detail or join in any discussion relating to this representation. Should you wish to discuss any aspect of this submission, please contact Meredith McCammond at mmcammond@litrg.org.uk.

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

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

4 About Us

4.1 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.

4.2 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.

4.3 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.

LITRG
30 Sept 2021