



Rt Hon Jeremy Hunt MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

1st February 2023

Dear Chancellor,

Budget Submission 2023 – Loan Charge Action Group

The Loan Charge Action Group is a non-profit volunteer run group that actively campaigns against Loan Charge legislation and the aggressive pursuit by HMRC of taxpayers to settle the associated tax demands. This is our 2023 Budget submission.

HMRC have now announced that ten people have taken their own lives facing HMRC action, related to HMRC's activity in relation to what they call 'disguised remuneration' schemes. For any Government policy to have caused ten suicides is shocking enough, but what makes this even worse is that the UK Government has been warned again and again that suicides were likely unless they changed course.

The need for a resolution to the Loan Charge Scandal

We urge the Government to finally listen and address the whole Loan Charge Scandal and crucially, to agree to find a resolution that would prevent further suicides as well as resolving the issue for HMRC and to end the issue as a political problem for the Government. This resolution must also apply to those facing action by HMRC using section 684 discretion (which effectively means that the Loan Charge was never needed) and for those being pursued by HMRC for pre-2010 open years (despite the Morse Review saying that the law was not clear before that date). It should apply to both individuals and personal service companies.

A resolution is essential, because affected taxpayers simply cannot afford to pay the demands HMRC are making of them. We urge the Government to listen to the group of sector professionals who have proposed a Loan Charge resolution in the form of a new settlement opportunity, but on terms that actually allow people to make full and final settlement of an appropriate and affordable proportion of the disputed tax and over a time period that makes payments affordable without hardship or having to sell their home.

Agencies involved in schemes should have operated PAYE at the time, according to the relevant legislation and case law and HMRC should have enforced the agency rules provisions of section 44 ITEPA 2003 to collect the PAYE income tax that was legally due from the agencies. Had they done so, there would have been no need to introduce the Loan Charge (or to use discretion in a way that was never intended by Parliament, blanket applying it retrospectively regardless of the circumstances of the case, which is wrong and unfair.

The vast majority of affected taxpayers were genuine victims of mis-selling with scheme promoters /operators stating that they were 'tax law compliant', 'QC approved' etc. and with little, or in most cases, no mention of any risk of challenge by HMRC and where this was mentioned, users were reassured that the promoter/operator would deal with any such action. It is important to note that chartered accountants and accredited tax advisers recommended and approved these schemes, as did some of the largest accountancy firms including some of the 'Big Four'.

In reality, the benefits of using these schemes to users, who typically paid fees of 18% from earnings, was not much if any more than the tax that would have been paid if operating as a personal service company (limited company). One of the injustices of the whole scandal is the fact that not only are HMRC not seeking a penny of the disputed tax from scheme promoters/operators, but worse than that they are content for the promoters/operators to retain those huge fees – paid in part by users to ensure tax compliance – and in effect demand this from those who were mis-sold schemes, despite knowing they never had this part of what HMRC now claim was always income. It cannot have been income, when it was taken as fees, for schemes now costing far more than any other way of working and, due to the Government and HMRC's approach, causing ruin and suicides.

At the same time, HMRC is well aware that companies are now demanding the loans are repaid, which means people are being asked to repay loans and pay tax as if they were income, at the same time. The Government could legislate to stop this, yet so far seem content to allow companies to hound people for money that the Government and HMRC have deemed income. This is grossly unfair.

As well as failing to enforce the agency regulations, HMRC failed to act properly at the time, they failed to adequately warn taxpayers for years and actually signed off tax returns as well as not raising objections when consulted directly about these schemes). Government and HMRC could and should have closed down these schemes, but they did not, instead retrospectively pursuing those who were mis-sold them and used them in good faith, believing them to be legitimate and compliant.

As a result of these factors, the settlement opportunity:

- Needs to be based on an appropriate and affordable proportion of the disputed tax HMRC believes is due and on genuinely affordable terms.
- Should not include making taxpayers admit wrongdoing or deliberate tax avoidance, when in many cases, this would be forcing them to make a dishonest admission (there are a significant number of people affected who had no idea their agency/umbrella company had put them into a loan/DR scheme.
- Must be full and final and close the underlying tax dispute.

To deal with the issue of Loan 'recall':

- In addition, legislation to stop those seeking repayment of loans, that the Government had deemed to be income and liable to income tax.
- To make agencies responsible for tax in the supply chain, passing the liability to them for referring workers to any schemes later deemed to be tax avoidance.

The benefit to the Treasury and HMRC

A resolution to the whole issue of historic 'DR' scheme usage would not only assist the tens of thousands of families whose lives are currently blighted due to the situation they are in, but would also assist the Government and HMRC.

A settlement opportunity along the lines suggested would significantly reduce the huge administrative burden of dealing with this group of taxpayers and would allow HMRC to focus on other areas of important work and compliance. HMRC would no longer have to deal with the many Freedom of Information requests, all of which have a cost associated to them in being answered.

Most importantly, we believe that such an opportunity would actually bring in significantly more to the Exchequer than the current approach as many people would then be able to and prepared to settle. This and only this would 'draw a line' under the use of schemes, which is what the Financial Secretary to the Treasury claims is the purpose of the Loan Charge, despite knowing that it has demonstrably failed to do so, for as well as there still being tens of thousands of people with matters unresolved, there has also been significant scheme use continuing since and with schemes still being actively promoted. The Budget this year is a chance to put right this administrative mess and to deal with the whole matter in a better way, resolving thousands of cases in a way that avoids bankruptcies, hardship and suicides, settles disputes, brings in more revenue and with lower administrative and legal costs and allows HMRC and the Treasury to focus on other more important areas, such as dealing with inflation and supporting businesses to grow the economy.

We remain willing to work with the Government and independent sector professionals to discuss such a proposal.

Action to stop the ongoing promotion and operation of schemes

To stamp out the operation and promotion of unacceptable/non-compliant tax avoidance schemes, which is still happening, the Government should:

- Tighten the law to make the promotion and operation of such schemes classed as a criminal offence.
- Make those who promote and operate schemes wholly liable for tax later deemed to have been avoided.


A Fairer and Clearer Tax System

We also urge the Government to create legislation for a much clearer and fairer taxpayer system:

- To limit the time that tax years can be 'open', with enquiries being automatically closed after 3 years, if HMRC has not taken action and if no further information has been revealed (and shared with the taxpayer).
- To legislate so that HMRC cannot charge interest for any periods caused by their own delays or their own failure to act at the time or to act or respond in a reasonable timescale.

- To abolish Accelerated Payment Notices (APNs) which are an affront to the principles of habeus corpus and reinstate the principle of innocent until proven guilty in the tax system.
- To ensure all taxpayers have the right to go to a tax tribunal, initially at a fixed cost, for any disputes with HMRC.
- To stop the practice of HMRC using taxpayers' money to pay for legal representation in cases against ordinary taxpayers (as opposed to genuine firms/larger companies) unless the taxpayer can access funding for representation also.

Yours sincerely,



Steve Packham
Spokesman & Executive Director



Andrew Earnshaw
Executive Director