The Loan Charge Scandal – the retro tax that has caused 10 suicides

Introduction – summary and current situation

The Loan Charge allows HMRC to issue retrospective tax demands as far back as December 2010 despite HMRC failing to act at the time and despite it never having been legally proven that this tax is due. Those affected are facing unpayable bills they simply cannot pay. If HMRC enforces these, there will be many bankruptcies, many people impacted will never work again and there is a serious suicide risk. **There have already been 10 suicides of individuals facing the Loan Charge** confirmed by HMRC in January this year (p.3). Many of those affected are amongst groups excluded from any support during the Covid pandemic. Many have also lost work due to the flawed IR35 off-payroll rules introduced in 2017 and 2021.

Key points about the Loan Charge Scandal:

- ***Those impacted are victims of mis-selling***

Workers who used payroll loan arrangements did so because they were advised to do so by accountants and tax advisers and those who operated the schemes ***and because it was in the interests of client companies, who were able avoid paying employers' taxation and providing workers' rights (holiday pay, pension etc)***. Workers were told the schemes were tax law compliant and were *not* informed of any risk of HMRC action and were reassured that this would not happen (or it if did, that the operator would deal with it). **In a May 2021** Loan Charge and Taxpayer Fairness APPG survey**, only a tiny minority said they'd had the risks of explained partially (6%) or fully (1%) whereas a vast majority (93%) did not have the risks explained to them at all.**

- ***Those impacted entered in the arrangements to be compliant and for admin purposes***

The overwhelming majority of workers impacted by the Loan Charge legislation used these arrangements not to avoid tax, but to structure their freelance work to be compliant under 'IR35' legislation. Some were told that the use of a particular intermediary was a condition of employment. Others were told that they would no longer be employed, but had to become self-employed even though there was no change to the work actually performed. Some had no choice. Large fees of around 18 to 20% were charged by the promoters/operators, who made huge profits, yet HMRC is demanding this from workers, despite knowing they never had this money – and in reality, had similar returns to using a limited company.

- ***The tax being demanded has never legally been proven to be due***

The reason HMRC pushed for the Loan Charge is that it avoids the usual need for tax disputes to be settled in court, in a tax tribunal. As admitted in internal emails, the Loan Charge means that they don't need to litigate cases. They can merely calculate the tax they think should have been paid and then demand this, denying the basic right to challenge this in court. This is outrageous as HMRC's 'view' is not the law.

- ***HMRC's approach takes away the basic fundamental right to challenge them in court***

The Loan Charge takes away the basic right of citizens to defend themselves in court, undermining fundamental tax (and human) rights and the rule of law. This is almost unprecedented in the UK and deeply sinister, as well as being very dangerous from a mental health perspective as not only can people not challenge HMRC's view in the normal tax tribunal process, but they cannot meaningfully negotiate with HMRC.

- ***HMRC failed to police the sector***

The Income Tax (Earnings and Pensions) Act 2003 clearly states that most agency workers must be treated as employees for Income Tax and National Insurance contributions purposes.

If HMRC had policed the agency sector and enforced the legislation, there would never have been any need for the Loan Charge. As well as the Loan Charge, HMRC are also now misusing powers of discretion, issuing what are called section 684 demands. They have limited discretion to transfer tax liability from employer to employees in certain circumstances, but are using these in a blanket way, to retrospectively demand tax that should have been collected from employers/agencies, from the worker.

- ***Those affected cannot afford the sums being demanded and there will be many bankruptcies***

Despite claims by HMRC to offer reasonable terms, the sums being demanded are punitive and unaffordable and far more than tax that workers would have paid had they operated a limited company arrangement.

The APPG survey in May 2021 found that:

- 75% say bankruptcy will be inevitable to them if HMRC enforces the Loan Charge.
- 55% expect having to sell their primary residence and/or having to release their equity (63%).
- 82% need to borrow substantial amounts to repay the Loan Charge and 70% need to use their pension.
- 77% say they would have to rely on state benefits because of their Loan Charge situation.

- ***The Government and HMRC have engaged in a cynical campaign of propaganda***

The Government and HMRC have, from the inception of the Loan Charge, been engaged in a cynical campaign of propaganda, to justify the Loan Charge and cover up its reality. They have also consistently issued misleading statements and answers to parliamentary questions, as exposed consistently by the APPG.

- The Government and HMRC has deliberately sought to portray all those who engaged in these schemes as serial tax avoiders, which is hugely unfair and has been a factor in some of the suicides.
- The Government and HMRC claim that the Loan Charge is collecting tax 'that has always been' due, yet this has never been legally proven (and the Loan Charge was designed to not have to bother doing so!).
- The Government and HMRC give the impression that those affected can afford to pay the Loan Charge and that they will be helpful/reasonable, when the reality is this is not the case.

- **The Morse Review came to a fundamentally flawed conclusion (and was not independent)**

The key conclusion of the Morse Review, that "the law was clear" from December 2010, is fundamentally flawed. The 2011 legislation only applied to 'employees' who received third party loans, **not to self-employed loans, *which is what these workers were advised to use from 2011***. The APPG published a powerful report on this. It also emerged that HMRC have not been able to find legal precedent for pursuing individuals, as opposed to employers. **The Morse Review has also been exposed as not being genuinely independent.** Freedom of information responses revealed many emails that show a wholly inappropriate relationship between the review team and HMRC and HM Treasury staff. The APPG published a damning report exposing this.

- ***The Government has not sought ANY of the disputed tax from promoters and advisers***

Whilst ruthlessly pursuing ordinary workers, **HMRC have failed to seek ANY of the disputed tax from those who promoted and operated the schemes**, and who made huge amounts of money this way. The Government and HMRC give the misleading impression that HMRC has taken action against those who recommended and promoted the schemes now subject to the Loan Charge, for doing so, but the reality is that they have taken no action in this regard. **There have been no arrests, prosecutions or convictions of anyone that promoted loan schemes now subject to the Loan Charge, for promoting such schemes.**

A fair resolution is urgently needed

A proposal by a group of independent sector professionals to pay an affordable proportion of the tax HMRC claims is owed would allow HMRC to collect some revenue without countless bankruptcies, and a serious risk of more suicides. It makes no sense to demand punitive sums that people simply cannot pay.

Without this, many face ruin, despite being victims of mis-selling. Ministers must listen and show some common sense and compassion before more lives are ruined.