



**Loan Charge Action Group**  
**Briefing Document to Loan Charge Review**

**Expatriate Impact of the Loan Charge**

## Executive Summary

The intent of this submission is to outline the specific issues unique to the many thousands of expatriates (1,720+ in Australia alone) impacted by the Loan Charge.

It should be noted that the issues captured here are in addition to the mental, process & legal impacts already outlined by LCAG, which equally apply to expatriates. These have been further compounded by:

- the lack of access to UK based support networks, MP's, health services & professional advice bodies;
- Severe delays & inaccuracies in HMRC processing settlements;
- HMRC failure to process open inquiries leading to the punitive accrual of interest;
- Reduced & cost prohibitive access to the UK & international justice systems & tax tribunals;
- HMRC & UK tax professionals being unable to provide clear advice / guidance on how the LOAN CHARGE applies to expatriates; &
- Removal of all tax certainty for the time they were resident in the UK, which is now impacting some people more than 10 years after they left.

It is our hope that you independently consider the content of this submission as part of your review & reform the retrospective reach of the Loan Charge accordingly.

## Contents

<i>Executive Summary</i> .....	2
<b>1</b> <i>Jurisdiction</i> .....	4
<b>2</b> <i>Abuse of International Tax Treaties</i> .....	4
<b>3</b> <i>Inadequate time allowed to make informed settlement decisions</i> .....	4
<b>4</b> <i>Variable Time to Pay Instalments &amp; Ongoing Conversion Fees</i> .....	5
<b>5</b> <i>Inadequate Notification &amp; Communication</i> .....	5
<b>6</b> <i>Duty of Care Failure</i> .....	5

## 1 Jurisdiction

HMRC are seeking to apply the Loan Charge to individuals who are non-tax resident / domiciled and whose UK tax affairs in all other circumstances are closed & final.

By HMRC's definition, the Loan Charge is a new charge which does not change the tax position of previous years. Accordingly, HMRC are trying to apply a new charge to expatriates that are no longer under their tax jurisdiction.

No precedent exists for HMRC to apply new UK tax laws to individuals living outside the UK for liabilities (in this case Loans) which are not physically based in the UK or for which no prior awareness of a tax liability existed at the time of earning. This is a gross overreach of HMRC's powers, which can also result in severely negative tax, benefit & pension implications for individuals within their home countries.

Commitments made by HMRC to UK residents in relation to the Loan Charge not impacting other state benefits or resulting in individuals being forced to sell their primary residence, cannot and do not apply to the expatriate community; they are governed under their home & International Tax Codes / Treaties.

There must be a point after which people who have ceased living in a country (with no further ties) are no longer governed under new tax laws arising in that country which were not in existence when they were resident.

## 2 Abuse of International Tax Treaties

For expatriates with open UK tax years, HMRC have attempted to use the Convention on Mutual Administrative Assistance on Tax Matters to collect APNs via international tax authorities.

As APNs by HMRC's own definition are "a payment on account" following a discovery assessment that is under appeal, they are not one of the taxes listed in Annex A of the Convention and are clearly outside the scope of the agreement, which only applies to final assessments and uncontested claims.

Although being notified of this abusive use of the treaty, HMRC have continued to lodge foreign revenue claims and in doing so have made knowingly false declarations that the claims 'fulfil the requirements of the agreement' and as such are using the Convention in bad faith.

In addition to the negative impacts of this on the individual, this also results in the abusive & wasteful use of the international tax authorities' resources who action the claim in good faith.

## 3 Inadequate time allowed to make informed settlement decisions

Despite this issue being continually raised by individuals to HMRC, no action has been taken by HMRC to expedite delivery of postal communications to expatriates through the use of registered or overnight post, nor is any additional time allowance applied to deadlines to take into account the 15 to 30 day International post lead times experienced.

This results in expatriates receiving communications either after deadlines have past or with only days to respond. This in turn limits the ability to assess the life changing demands being made of them by HMRC and to seek professional & independent advice if required. Accordingly, the pressure & stress felt by expatriates in dealing with HMRC is significantly increased.

#### 4 Variable Time to Pay Instalments & Ongoing Conversion Fees

HMRC has no facility for expatriates to pay settlement instalments within their home countries based on a point-in-time exchange rate.

This increases the difficulty & risk in agreeing to the affordability of long-term Time-To-Pay arrangements by forcing them to agree to variable monthly instalments and payment of ongoing currency conversion fees.

Living & working conditions outside the UK are fundamentally different, so the payment of tax liabilities in Sterling through earnings made in a different currency has a compounding impact on those affected. This is not only due to variable exchange rates & fees but also as a result of different cost of living pressures & reduced earning potential in other countries compared to that of the UK.

Many expatriates also do not have the option to return the UK to avoid these issues due to Visa / Immigration controls. As such, these factors compound the punitive nature of the charge on expatriates.

#### 5 Inadequate Notification & Communication

Not only have HMRC failed to provide expatriates with sufficient notification (or in many cases any notification) of the Loan Charge, but no communication has been tailored to address how the Loan Charge & Settlement Processes specifically relates & applies to this group. In addition, HMRC helplines are unable to provide any assistance in dealing with specific international questions related to the Loan Charge & Settlement processes.

#### 6 Duty of Care Failure

Given the high number of expatriates impacted by the Loan Charge it is clear this group were specifically targeted by Scheme Promoters, primarily through recruitment agencies & umbrella companies associated with contract employment.

Unfamiliarity with the UK tax system & IR35 rules, coupled with the offer of temporary employment & non-permanent visas, significantly reduced the ease & willingness of this group to set up Limited Companies. This in turn increased their dependency on the receipt of paid professional advice, which was sought & provided from independent accountants, QC's, recruitment agencies, umbrella companies & scheme providers.

By continuing to accept submitted SATR's & not notify individuals of their concerns, HMRC have failed in their duty of care to protect expatriates who were more vulnerable to being targeted by scheme promoters.