



Loan Charge Action Group

Loan Charge Review

Submission in Relation to The Document 'Government response to the conclusions and recommendations of the Treasury Sub-Committee report on Disputing Tax 'which was as published on the 10th October 2019.

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<https://www.gov.uk/government/news/government-response-to-the-conclusions-and-recommendations-of-the-treasury-sub-committee-report-on-disputing-tax>

It is noted that this was published during the period of the review, but makes no reference to the review or any suspension of settlement discussions during this time.

Two particular responses are particularly misleading and incorrect.

Recommendation 2 (paragraph 27)

There have been delays in providing settlement terms to those who wished to settle their affairs under the Contractor Loan Settlement Opportunity. We recommend that HMRC closely monitors its response times and reports back to us on progress in providing settlement calculations.

Government response

The government partially accepts this recommendation.

HMRC has acknowledged that there have been delays responding to taxpayers who expressed an interest in settling their use of disguised remuneration tax avoidance schemes.

The Contractor Loan Settlement Opportunity prompted a big response. By 5 April 2019 over 19,000 people had expressed an interest and provided the information needed to settle their use of disguised remuneration schemes.

HMRC deployed additional resources to support the settlement process and by 31 August 2019 over 99% of users had received their settlement calculations.

HMRC continues to support taxpayers who provided the information by 5 April 2019 to settle their cases and will allow sufficient time for them to do this.

HMRC has confirmed that no one who provided the necessary information by 5 April 2019 will be disadvantaged if settlement of their case takes longer as a result of HMRC delay.

HMRC's systems do not monitor response times for this settlement activity on an automated basis. However, HMRC will publish further information about progress on settling cases in its 2019 to 2020 annual report.

LCAG comment

No reference is made to the review or suspension of the settlement discussions during this time.

Taking into account the figures provided by HMRC, this response means that no more than 190 people were still waiting for their settlement calculations.

The Loan Charge Action Group carried out a survey in September (previously provided to the Review). From 820 responses:

- 136 (16%) had not received their settlement calculations despite having provided all information to HMRC before the 5th April 2019.

- 43 (5%) had not received their settlement calculations despite having provided all information to HMRC after 5th April 2019.

If we are to believe the government's response that 190 people have not had their settlement calculations, only 54 of them were not respondents to LCAG's survey.

We would suggest that based on our survey, it is simply not possible that HMRC have provided settlement calculations to over 99% of those people who have expressed an interest in settlement.

Recommendation 4 (paragraph 28)

On the face of it, the Financial Secretary to the Treasury's announcement that HMRC would not pursue the charge on individuals in 'closed' tax years in which participation in a loan-based scheme had been fully disclosed seems sensible. We recommend the government reports on how many individuals this will impact, and the amount of money being written off.

Government response

The government accepts this recommendation.

HMRC has made clear that they will not apply the Loan Charge to a tax year where an enquiry was closed on the basis of fully disclosed information. HMRC will report on the number of individuals impacted and the associated tax forgone in its 2019 to 2020 annual report.

LCAG comment

This response is very worrying in the context and appears to have conflated 'closed' years and those which have had an enquiry and then been closed. These are two very different things.

HMRC can open an enquiry into a tax return within 12 months, or within four/six/twenty years by discovery notice. These years are commonly referred to 'open' years. If a year is not 'open' it is 'closed'.

A year may be closed by HMRC finalising an enquiry in an open year and confirming the position and then closing that enquiry. A year is also closed if no enquiry has been opened at all.

To add confusion, HMRC generally use the terms 'protected' and 'unprotected'. A 'protected' year is an 'open' year, and 'unprotected' year is a 'closed' year.

The wording of the recommendation would give an interpretation that **any** year which is 'closed' will not be subject to the Loan Charge. The government's response accepts this recommendation and then proceeds to substantially change it by reference to an **enquiry** being closed.

The government response indicates that they will only not pursue years where:

- An enquiry was opened
- The year had fully disclosed information
- That enquiry was then closed

How can these additional criteria be added, whilst apparently accepting the recommendation?

Many people impacted by the Loan Charge have 'closed' years – years that have never had an enquiry opened into them. Despite the fact that the government accepts the recommendation to exclude these years, the additional criteria in the government's response mean that these years will still be within scope of the Loan Charge - a misleading response from the government.