

The retro tax that has caused suicides - Loan Charge Briefing

June 2022

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 this, there will be many bankruptcies, many people will never work again and there is a serious suicide risk. **There have already been 8 suicides of people facing the Loan Charge.** Many people facing the Loan Charge are amongst the self-employed and freelancer groups who've been excluded from any support during the Covid pandemic. Many have also lost work due to the flawed IR35 off-payroll rules roll-out.

Key points about the Loan Charge Scandal:

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

Those 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 wanted to avoid employment taxation**. People were told that the schemes were tax law compliant and were not only not informed of any risk of action by HMRC but were reassured that this would not happen (or if it did, that the scheme operator would deal with this). **In a May 2021 Loan Charge and Taxpayer Fairness APPG survey, only a tiny minority of respondents said they'd had the risks of engaging in these schemes explained partially (6%) or fully (1%) whereas a vast majority (93%) did not have the risks explained to them at all.**

- ***People impacted by the Loan Charge did not enter into loan arrangements to avoid tax***

The overwhelming majority of people 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. People were advised to structure work in this way. Some people were told that the use of a particular intermediary was a condition of employment. Other workers were told that they would no longer be employed, but had to become self-employed in this way, even though there was no change to the work actually performed. Some had no choice.

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

The whole point of the Loan Charge is that it avoids the usual need for tax disputes to be settled in court, in a tax tribunal. As admitted by HMRC, 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, with people having no right to challenge this in court. This is outrageous as HMRC's "view" is not the law and HMRC has lost several cases.

- ***People have had the basic fundamental right to challenge HMRC in court taken away***

The Loan Charge takes away the basic right of people 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 to people's mental health as not only can people not challenge HMRC's view in the normal tax tribunal process, but they cannot meaningfully negotiate with HMRC.

- ***People 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, unreasonable and unaffordable and far more than tax that people 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% of people 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 people 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 people were advised to use from 2011***. It has also recently been exposed that internally 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, indeed the Treasury and HMRC interfered** - Freedom of information requests revealed a huge number of emails that clearly show a wholly inappropriate relationship between the review team and HMRC and HM Treasury staff. The Loan Charge APPG published [a powerful report](#) exposing this.

- ***All removing the Loan Charge would do is to restore the right to challenge HMRC***

Removing the Loan Charge would not 'let anyone off paying tax', it would merely restore the position to the law at the time. All open enquires could be concluded in the normal way, according to the law and people would have the right to argue their case in a tax tribunal and/or negotiate a fair settlement with HMRC.

- ***There will be devastating consequences if HMRC enforce the Loan Charge***

[There have already been 8 known suicides of people facing the Loan Charge](#). There have also been bankruptcies. The figures revealed by the APPG survey give some idea of the devastating consequences if the Government doesn't change course and come up with a fair resolution. HMRC and the Government have repeatedly been asked to set up a helpline for suicidal people facing the Loan Charge, but have refused.

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

Whilst ruthlessly pursuing ordinary people, **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 tax professionals](#) to pay an affordable proportion of the tax HMRC claims is owed (even though it's never been proven) would allow HMRC to collect some revenue without countless bankruptcies, and a serious risk of more suicides. **Without this, many face ruin, despite being victims of mis-selling.**