



FAO: The Office of the Chancellor of the Exchequer
Her Majesty's Treasury
The Correspondence and Enquiry Unit
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United Kingdom

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Our ref: CC04/AYC/LOA4.1

23 September 2020

Dear Sirs

Review into the April 2019 Loan Charge – Request for Reconsideration

Introduction

- 1.1 We write on behalf of a group of taxpayers who are affected by the legislation enacted in Schedules 11 and 12, Finance (No.2) Act 2017 (the **Loan Charge**) and in relation to the attached All-Party Parliamentary Group Report (the **APPG Report**) on the review of the Loan Charge, conducted by Sir Amyas Morse (the **Morse Review**, or the **Review**).
- 1.2 Applying that unique expertise and experience, the APPG Report provides clear evidence that the Morse Review was not independent, and that HM Treasury (**HMT**) and HM Revenue and Customs (**HMRC**) unfairly and improperly interfered in the conduct of the Review. In light of that evidence, we believe that HMT is duty bound to request that Sir Amyas Morse consider the APPG Report and reflect its findings in an addendum or amendment to the report published as a result of the Morse Review (the **Morse Report**). As part of that process, Sir Amyas Morse should be asked to consider whether the APPG Report affects his conclusion that the position on loan schemes was clear from 9 December 2010 onwards. If he consents, Sir Amyas must be allowed to carry out this exercise free from interference from HMT or HMRC.
- 1.3 If you, or those responsible at HMT, are unwilling to grant this request then we ask that you provide detailed reasons why.
- 1.4 In support of this request, this letter:
 - 1.4.1 briefly summarises the Loan Charge and the background to the Morse Review;
 - 1.4.2 briefly summarises the findings of the Morse Review;
 - 1.4.3 summarises the findings of the APPG Report; and

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1.4.4 sets out why HMT must ask Sir Amyas to consider the APPG Report and reflect its findings in an amendment or addendum to the Morse Report.

2. **The Loan Charge**

- 2.1 The Loan Charge refers to a measure introduced in the Finance (No.2) Act 2017, intended to tax outstanding loans that had been advanced to taxpayers under what HMRC considered to be “disguised remuneration”. In short, for a number of years, a variety of taxpayers had been advanced loans that HMRC thought ought properly to be treated as remuneration in the hands of the relevant taxpayer and so subject to income tax and National Insurance Contributions (**NICs**).
- 2.2 On 9 December 2010, the Government issued draft legislation, now contained in Part 7A, Income Tax (Earnings and Pensions) Act 2003 (**ITEPA 2003**), that was intended to counter the use of these loans by treating them as disguised remuneration. Despite this new measure a large number of taxpayers continued to enter into loan schemes, generally on the basis of advice that they did not fall within the ambit of the new legislation.
- 2.3 However, with the introduction of the Loan Charge, any third-party employment-related loan made on or after 6 April 1999, which was outstanding immediately before the end of 5 April 2019, was treated as taxable under the disguised remuneration rules found in Part 7A, ITEPA 2003. Notably and controversially, this retroactive aspect of the Loan Charge meant that taxpayers could find themselves liable for income tax and NICs on loans stretching back 20 years. At the time those taxpayers had taken out the loans the Loan Charge did not exist, but they now found themselves owing large amounts of tax under the new legislation.
- 2.4 The effect of the Loan Charge was therefore severe. Many of the taxpayers affected were those on mid-range or lower incomes and had taken loans on the insistence of their employers and/or on the basis of professional advice. Faced with this new extraordinary charge, the distress caused to affected taxpayers was more than merely financial, it seriously impacted upon the mental health of many and even led to some of them committing suicide.
- 2.5 As a result, and following stern criticism from the public and Members of Parliament, the Government commissioned the Morse Review.

3. **The Morse Review**

- 3.1 In September 2019, Sir Amyas Morse was requested, by HMT, to lead what was meant to be an independent review of the Loan Charge. Sir Amyas accepted and in December 2019 produced the Morse Report.
- 3.2 The Morse Report made findings and came to certain conclusions regarding the Loan Charge. In particular, the Morse Report found that:
- 3.2.1 from 9 December 2010 onwards, it was clear that the law did treat relevant loans as “disguised remuneration”; and
- 3.2.2 as such, loans entered into before that date should not be subject to the Loan Charge, but that those loans entered into thereafter should (with some ameliorating measures) continue to be subject to the Loan Charge.

3.3 The Government accepted most of the Morse Review's recommendations, and as a result proposed certain amendments to the Loan Charge legislation in Finance Bill 2020, which received Royal Assent on 22 July 2020 and so became the Finance Act 2020.

4. **The APPG Report**

4.1 Having been instrumental in calling on the Government to set up an independent review of the Loan Charge, the APPG sensibly and appropriately also sought to determine that the Morse Review was indeed independent and was able to exercise its duties in a proper way.

4.2 As a result of requests made pursuant to the Freedom of Information Act 2000, the APPG discovered that the Morse Review was not in fact independent, and that there had been undue influence exerted by both HMRC and HMT.

4.3 The full details of this lack of independence are set out in the APPG Report, but in short:

4.3.1 the scope and objectives of the Morse Review were deliberately limited and narrowly defined to limit the potential for any more extensive recommendations that might otherwise emerge;

4.3.2 the Morse Review secretariat was comprised entirely of HMRC and HMT staff;

4.3.3 HMRC and HMT continually sought to improperly influence the Review, starting before Sir Amyas Morse had been appointed and continuing until the final report was issued;

4.3.4 the Review secretariat had an improperly close working relationship with HMRC and HMT treasury staff;

4.3.5 there was inappropriate involvement by the Chancellor's Press Secretary when the Review secretariat was dealing with the media and evidence of an inappropriate relationship between the Review secretariat and the Press Secretary;

4.3.6 there were improper communications between the Review secretariat and HMRC in preparing answers for the Treasury Select Committee that was also considering the Loan Charge;

4.3.7 HMT improperly sought to influence the choice of experts appointed to advise the Review; and

4.3.8 HMT and HMRC were improperly and inappropriately allowed to review the conclusions of the Morse Review and to provide input on those conclusions and the Review's findings and recommendations.

4.4 In short, the APPG Report shows that the Morse Review was not an independent review of the Loan Charge.

5. **HMT must request Sir Amyas to consider the APPG Report**

5.1 Since the publication of the APPG Report, neither the APPG nor the Loan Charge Action Group has received any comment on its findings from either HMT or Sir Amyas Morse. The evidence provided by the APPG Report strikes at the heart of what the Morse Review was intended to do – provide an independent review of the Loan Charge legislation. It is therefore

surprising that no response has been made to the APPG report by either HMT or Sir Amyas Morse.

- 5.2 The terms of reference set out by the Government specify that the Review was intended to be independent,¹ the Morse Report itself is entitled the "*Independent Loan Charge Review*" (emphasis added), and MPs writing on behalf of the Loan Charge APPG continually stressed the need for the Review to be genuinely independent and free from interference from HMT and/or HMRC.²
- 5.3 Indeed, the need for the Review to be independent of HMT and HMRC is self-evident. It was HMT and HMRC that were instrumental in proposing and enforcing the Loan Charge and both HMT and HMRC stood to lose (or gain) from an unfavourable (or favourable) report. It was impossible for the Review of the Loan Charge to function independently when being improperly influenced by those who had a stake in the Review's outcome.
- 5.4 As set out above, the Loan Charge has had a significant detrimental impact on a wide variety of taxpayers' lives. The need for an independent review of this controversial legislation was stressed by various parties and accepted by the Government itself. It is therefore clear that in order for the Morse Review to fulfil its intended function, HMT must ask Sir Amyas to consider the APPG Report and reflect its findings in an amendment or addendum to the Morse Report.

6. Conclusion

- 6.1 Therefore, and for the reasons set out above, HMT must ask Sir Amyas Morse to consider the APPG Report and, in light of the APPG Report, to make any amendments or addendums to the Morse Report that he considers appropriate.
- 6.2 If HMT is unwilling to do so, please provide detailed reasons why.

We look forward to hearing from you.

Yours faithfully



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¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830531/LC_Review_ToR_web.pdf

²<http://www.loanchargeappg.co.uk/wp-content/uploads/2019/09/2019-09-10-Letter-from-Loan-Charge-APPG-re-Loan-Charge-Review.pdf>